Supreme Court, U.S.
FILED

10-411 SEP 23 2010

OFFICE OF THE CLERK

171 (2)

No.

In The
Supreme Court of the United States

WILLIAM M. WINDSOR,
Petitioner

v.

JUDGE ORINDA D. EVANS, Appellee
MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Respondents

On Petition for Writ of Certiorari
To The United States Court of Appeals for The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI
APPENDIX

William M. Windsor
Pro Se
PO Box 681236
Marietta, GA 30068
770-578-1094

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Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

September 2, 2010

Mr. William M. Windsor
P.O. Box 681236
Marietta, GA 30068

Re: William M. Windsor
v. Maid of the Mist Corporation, et al.
Application No. 10A98

Dear Mr. Windsor:

The application for a further extension of time in the above-entitled case has been presented to Justice Thomas, who on September 2, 2010 extended the time to and including September 23, 2010.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

By /s/

Erik A. Fossum
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

July 27, 2010

Mr. William M. Windsor
P.O. Box 681236
Marietta, GA 30068

Re: William M. Windsor
v. Maid of the Mist Corporation, et al.
Application No. 10A98

Dear Mr. Windsor:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on July 27, 2010 extended the time to and including September 8, 2010.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

By /s/

Erik A. Fossum
Case Analyst

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-14735-DD

MAID OF THE MIST CORPORATION,
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Plaintiffs-Appellees,

Versus

WILLIAM M. WINDSOR,
Defendant-Appellant

JUDGE ORINDA D. EVANS,
Movant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

---

ORDER:

Consistent with the Court's April 26, 2010, Order barring any additional filings in this closed appeal, the Clerk is directed to return unfiled the documents tendered by Appellant after entry of our Order.

The Clerk may discard any documents tendered by Appellant after the entry of this Order.

/s/

UNITED STATES CIRCUIT JUDGE

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 28 2010

JOHN LEY
CLERK

APPEAL DOC.NO. 09-14735-D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JUDGE ORINDA D. EVANS, Appellee
MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC.,
Defendants; and WILLIAM M. WINDSOR, Appellant
and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Case No. 1:09-CV-01543-WSD
Judge William S. Duffey, Jr.

MOTION FOR RECONSIDERATION OF ORDER DATED APRIL 26, 2010 AND REQUEST TO ALLOW MOTION FOR REHEARING EN BANC TO BE CONSIDERED

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PRO SE FOR DEFENDANT/APPELLANT,
WILLIAM M. WINDSOR

William M. Windsor ("Windsor") hereby submits this MOTION FOR RECONSIDERATION OF ORDER DATED APRIL 26, 2010 AND REQUEST TO ALLOW MOTION FOR REHEARING EN BANC TO BE CONSIDERED to this Court for consideration for filing. Windsor shows the Court as follows:

1. The Order dated April 26, 2010 ("ORDER") is EXTREMELY UNFAIR from this panel of the Eleventh Circuit. [ORDER is Exhibit 1.]

2. The Clerk of the Court accepted and filed Windsor's April 6, 2010 "Reasonable Response" to the Panel's request for Windsor to respond to Plaintiffs' request for attorneys' fees. Now this Panel wants to deny that it was filed. This is unfair and surely improper

3. The Panel's excuse is that the "Reasonable Response" exceeds the 20 page limit of Fed.R.App.P. 27(d)(2). [Exhibit 2.] But Windsor's "Reasonable Response" is not a response to a motion as dictated by Fed.R.App.P. 27(d)(2). The docket in this Appeal will show that Windsor previously filed a response to the motion that met the requirements of Fed.R.App.P. 27(d)(2). The "Reasonable Response" was a response requested by this Panel in regard to an award of sanctions pursuant to FRAP Rule 38. It wasn't a motion at all. FRAP Rule 38 places no page limits on a

"Reasonable Response." It simply provides that after notice from the court, a "reasonable opportunity to respond" will be provided. This is what Windsor provided – a response to an outrageous sanction. [See Exhibit 3.] This Panel also refers to 11th Cir. R. 27-4, but it similarly provides "a reasonable opportunity to respond," and it places no page limits on the "Reasonable Response." Windsor carefully checked the FRAP and 11th Cir. Rules before filing this "Reasonable Response." Exhibit 4 shows that there are no rules relative to Answers. Exhibit 5 shows that there are no rules relative to Responses to an answer on documentation on a request for attorneys' fees. A search for "local rule 27" in versuslaw.com returns only two cases, and neither case refers to 27-4. [Exhibit 6.] As a result, it is totally improper for this Panel to reject Windsor's "Reasonable Response." This Panel has violated FRAP 38 and 11th Cir. R. 27-4 by denying Windsor a "Reasonable Response."

4. On March 8, 2010, Windsor filed a Motion for a Hearing on the FRAP Rule 38 sanctions. This 17-page Motion is the proscribed length. The Motion cited over 100 cases in support. On April 5, 2010, Windsor filed a Reply to Appellees' Response in Opposition to Windsor's Motion for Hearing on the issue of FRAP Rule 38 sanctions. This 10-page Reply is the proscribed length. This Reply again cited the key Eleventh Circuit case that says Windsor is entitled to an evidentiary hearing. This Panel could have ruled on this motion that pre-dated the "Reasonable Response," rather than denying it because a subsequent motion was viewed as too long. The hearing would provide the ability for Windsor to provide a "reasonable response."

5. This Panel wants to award sanctions against Windsor, but this Court has not made an inquiry to determine if Windsor has the money to pay. Windsor cannot afford to pay sanctions. Windsor has submitted financial information to this Court under seal for in camera inspection. Windsor prays that the financial information will be returned based upon this ORDER.

6. This ORDER denies Windsor the ability to file a Notice of Appeal to the Supreme Court, and it denies him the ability to seek a stay while that appeal is pending. Windsor cannot afford to pay these sanctions, and relief is desperately needed.

7. On March 29, 2010, Windsor submitted a Petition for Rehearing En Banc. Windsor's file copy is Exhibit 7 hereto. Windsor respectfully requests that this Petition be distributed. The decision of this Panel has to be completely and totally erroneous, and there are significant issues involved.

WHEREFORE, Windsor prays that this Court grant said motion and that this Court do as follows:

(1) grant this motion;
(2) issue an order allowing Windsor's financial documents to be filed under seal for an in camera inspection;
(3) grant Windsor's Motion for Hearing filed on March 8, 2010;
(4) schedule an evidentiary hearing;
(5) consider Windsor's "Reasonable Response" as it was filed, or allow Windsor to file a shorter "Reasonable Response," if necessary;

(6) process the Petition for Rehearing En Banc so it may be considered by the Eleventh Circuit; and

(7) grant such other relief as the Court deems appropriate.

Respectfully submitted, this 4th day of May, 2010.

/s/_____
WILLIAM M. WINDSOR
Pro Se

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(Certificates of Compliance, Service, and Interested Parties have been omitted to reduce the size and cost of this Appendix.)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-14735-DD

MAID OF THE MIST CORPORATION,
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Plaintiffs-Appellees,

Versus

WILLIAM M. WINDSOR,
Defendant-Appellant

JUDGE ORINDA D. EVANS,
Movant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

---

BEFORE: CARNES, BARKETT and HULL, Circuit Judges.

BY THE COURT:

All pending motions filed by Appellant, including Appellant's motion to vacate and for reconsideration, and any request for relief contained in any other document filed by Appellant are DENIED.

Appellant's response to Appellees Maid of the Mist, et al. ("Maid")'s motion for Eleventh Circuit Rule 27-4 sanctions far exceeds the twenty (20) page limit of Fed.R.App.P. 27(d)(2). Therefore, we STRIKE Appellant's response and direct the Clerk to return that document unfiled.

Maid's motion for Eleventh Circuit Rule 27-4 sanctions for Appellant's filing of frivolous motions is DENIED in light of the Rule 38 sanctions that we award below. However, we note that this Order does not preclude the grant of another Rule 27-4 motion filed in any of Appellant's other appeal or petitions pending with this Court.

In compliance with the direction in our February 25, 2010, Order dismissing the appeal as frivolous and granting Rule 38 sanctions to Maid, Maid has filed a statement of its costs and expenses (including attorneys' fees). Maid seeks an award of Rule 38 sanctions in an amount of $37,401.17.

We have reviewed the declaration of maid's counsel, the records attached thereto, and Appellant's over-long response, which fails to meaningfully challenge the amounts sought by Maid.

We note that the first of Maid's billing entries is for work performed before the notice of appeal for this case was filed in the District Court. Consequently, we discount that entry for $67.50 in our determination of the amount to be awarded.

We GRANT Maid's application for Rule 38 sanctions in the form of attorneys' fees and single costs in the amount of $37,333.67.

As a final matter, we DIRECT the Clerk to accept no further filings from Appellant in this closed appeal.

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT

Apr 26 2010

JOHN LEY
CLERK

APPEAL DOC.NO. 09-14735-D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JUDGE ORINDA D. EVANS, Appellee
MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC.,
Defendants; and WILLIAM M. WINDSOR, Appellant
and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Case No. 1:09-CV-01543-WSD
Judge William S. Duffey, Jr.

OPPOSITION OF WILLIAM M. WINDSOR TO PLAINTIFFS' APPLICATION FOR "COSTS AND EXPENSES" UNDER RULE 38 PURSUANT TO ORDER DATED FEBRUARY 25, 2010

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PRO SE FOR DEFENDANT/APPELLANT,
WILLIAM M. WINDSOR

William M. Windsor ("Windsor") opposes the Plaintiffs' Application for "Costs and Expenses" filed on March 10, 2010 in the form of "Declaration of Carl H. Anderson, Jr., ("Mr. Anderson") Counsel for Appellees," for the reasons expressed herein and in documents referenced.

(pages deleted)

ARGUMENTS AND AUTHORITY

This Court's Order provides no rational explanation, inexplicably departs from established law, is devoid of any reasoning, and doesn't even contain objectionable summary or conclusory statements – it contains no statements. (See *Avalos v. U.S. Att'y Gen.*, 2006 WL 2567603 (11th Cir. Sept. 7, 2006).)

Windsor opposes the Application of Appellees for "Costs and Expenses" for a significant number of reasons. FRAP Rule 38 provides a "reasonable opportunity to respond" and says the court may award "just damages." An award of ANY damages in this matter would not be just.

Windsor finds no page limits mentioned on an FRAP 38 "reasonable opportunity to respond, so this Opposiiton will go significantly over the pages due for a normal response to a motion. If Windsor needs to move for approval to exceed the page count, he so moves. Windsor demands an evidentiary hearing.

(pages deleted)

Respectfully submitted this 29th day of March, 2010.

William M. Windsor

/s/_____
William M. Windsor
Pro Se

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APPEAL DOC.NO. 09-14735-D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC.,
Defendants; and WILLIAM M. WINDSOR, Appellant
and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Case No. 1:09-CV-01543-WSD
Judge William S. Duffey, Jr.

MOTION TO VACATE ORDER AND MOTION FOR RECONSIDERATION BY APPELLANT WILLIAM M. WINDSOR

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PRO SE FOR DEFENDANT/APPELLANT,

1. This is a Motion to Vacate Order of this Court dated February 25, 2010 dismissing Windsor's Appeal and granting sanctions pursuant to FRAP 38 ("ORDER" – Exhibit A hereto) and a Motion for Reconsideration ("MTVMFR"). The Appeal ("Appeal") is from the orders of the United States District Court, Northern District of Georgia, Civil Action Number1:09-CV-01543-WSD entered June 30, 2009 and September 2, 2009 ("Appealed Orders" – Exhibit B hereto).

2. This Court's decision provides no rational explanation, inexplicably departs from established law, is devoid of any reasoning, and doesn't even contain objectionable summary or conclusory statements – it contains no statements. (See *Avalos v. U.S. Att'y Gen.*, 2006 WL 2567603 (11th Cir. Sept. 7, 2006).)

3. This MTVMFR contains new evidence, presents an intervening expression of law, explains clear errors in this Court's previous ruling to warrant vacating, and presents law pertaining to "frivolous" appeals. (*Ray v. Equifax Information Services, LLC*, No. 08-10879 (11th Cir. 04/13/2009).)

A. THIS ORDER VIOLATES THE LAW OF THE ELEVENTH CIRCUIT REGARDING BOTH SANCTIONS AND DEPOSITIONS OF JUDGES.

4. Windsor is pro se, and sanctions are inappropriate. The District Court never indicated that Windsor's claims were meritless. In neither of the Appealed Orders did Judge Duffey warn Windsor about anything. None of the Appellees indicated that Windsor's claims were meritless or even requested

sanctions in the District Court. (See Exhibit B.) This is a clear error of law. The Eleventh Circuit says:

> "Generally, sanctions under Fed. R. App. P. 38 and § 1912 are inappropriate against a pro se appellant even if the appeal is frivolous. *Woods v. IRS*, 3 F.3d 403, 404 (11th Cir. 1993) (per curiam). Nevertheless, we have imposed sanctions on pro se litigants who were warned by the district judge that their claims relating to various tax issues were meritless. *United States v. Morse*, 532 F.3d 1130, 1132-33 (11th Cir. 2008) (per curiam); *King v. United States*, 789 F.2d 883, 884 (11th Cir. 1986) (per curiam). While Pollinger's claims are frivolous in nature, after reviewing the record in full, and considering that Pollinger is a pro se appellant, we deny the government's motion for sanctions." (*Pollinger v. Internal Revenue Service Oversight Board*, No. 09-12295 (11th Cir. 01/15/2010). [emphasis added.]
>
> We have imposed Rule 38 sanctions on a pro se taxpayer after the Tax Court had apprised the taxpayer of the potential consequences of maintaining an appeal based on arguments previously rejected by the court. (*Biermann v. Comm'r*, 769 F.2d 707, 708 (11th Cir. 1985).) (*Perkins v. Commissioner of IRS*, No. 07-12689 (11th Cir. 01/09/2008).)

5. There are many examples of federal district judges giving testimony in the territory of the Eleventh Circuit:

"...the courts apparently have had little difficulty in calling federal district judges to the witness stand. For example, in *United States v. Jenison*,485 F. Supp. at 665, eight United States District Judges from the Southern District of Florida testified.... And in *United States v. Holman*, 510 F. Supp. at 1180, a federal district judge testified ... in the Northern District of Florida. See also *United States v. Cabrera-Sarmiento*, 533 F. Supp. at 805 n. 2; *United States v. Breland*, 522 F. Supp. 468, 471-74 (N.D.Ga.1981) (testimony of nine federal district judges).

"Further, the practice of calling federal judges to testify in these cases has been discussed, and approved sub silentio, on two occasions in the Eleventh Circuit. See *United States v. Holman*, 680 F.2d at 1357; *United States v. Perez-Hernandez*, 672 F.2d at 1387-88 (defendant adopted record in the Jenison case for purposes of his dismissal motion)." (*United States v. Cross*, 708 F.2d 631 (11th Cir. 06/30/1983).)

6. The justification cited by the Appellees and Judge Duffey to quash the subpoena for deposition was "mental processes." But Windsor made it absolutely clear that he would not seek testimony about the judge's mental processes. [Appeal Brief P 34, 41, 53, 54, 56-60.] Windsor even agreed to let Judge Duffey approve the deposition questions in advance. [Appeal Brief P 41, 53, 54.] (See generally *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986).)

7. Research done by Windsor indicated that judges are clearly subject to depositions.

> (See *Peek v. Kemp*, 746 F.2d 672 (11th Cir. 10/26/1984); *Proffitt v. Wainwright*, 685 F.2d 1227 (11th Cir. 09/10/1982); *Wynn v. Smith*, 446 F.2d 341 (5th Cir. 07/12/1971); *Young v. Barrett*, 912 F.2d 466 (6th Cir. 08/27/1990); *Doherty v. American Motors Corp.*, 728 F.2d 334 (6th Cir. 02/24/1984); *R.W.T. v. Honorable Donald E. Dalton*, 712 F.2d 1225 (8th Cir. 07/11/1983); *Alan Mcsurely, Et Al. v. John L. Mcclellan, Et Al*, No. 82-2369 (DC Circuit) 12/10/82; *Glaser v. Board of Bar Examiners*, 17 F.3d 394 (9th Cir. 02/11/1994); *Spry v. Boles*, 299 F.2d 332 (4th Cir. 02/13/1962); *Buckner v. Hudspeth*, 105 F.2d 396 (10th Cir. 06/20/1939); *Drake v. Portuondo*, No. 06-1365-pr (2d Cir. 01/23/2009).

8. But the clearest evidence is the Subpoena Regulations of the Judicial Conference that Windsor identified and used as the roadmap for his subpoena of Judge Evans. [Appeal Brief P 34-41.]

> The test that should be applied in determining whether a judge may be compelled to testify is well stated by Judge Austin, of the United States District Court for the Northern District of Illinois, in *Standard Packaging Corporation v. Curwood, Inc.*, 365 F. Supp. 134 (1973), as follows: "Generally, all individuals are subject to the lawful authority of a competent court to compel testimony of any facts within their knowledge and relevant to the issues at hand. (Citations omitted.) An exemption from compulsory testimony is

> recognized in certain situations to protect the integrity and individual responsibility of government officials whose duties involve the exercise of judicial and quasi-judicial authority (Citations omitted.) The essential line of demarcation appearing from the cases is that judicial and quasi-judicial officers may be compelled to testify only as to relevant matters of fact that do not probe into or compromise the mental processes employed in formulating the judgment in question...." (*United States v. Cross*, 516 F. Supp. 700 (M.D.Ga. 06/18/1981).)

9. The ORDER of this Court is a clear error of fact and law.

B. THIS COURT ERRED IN ISSUING AN ORDER INDICATING THAT WINDSOR'S APPEAL WAS FRIVOLOUS

10. Windsor's Appeal was not frivolous.

11. Eleventh Circuit Rule 27-4 defines a frivolous motion:

> "A motion is frivolous if: (a) it is without legal merit and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, or the establishment of new law; or (b) it contains assertions of material facts that are false or unsupported by the record; or (c) it is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

12. "... a complaint may not be dismissed as frivolous if 'any of the legal points (are) arguable on their merits.'" (*Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400, 18 L. Ed. 2d 493 (1967).) Since judges do not have an immunity regarding depositions; since the only case law cited by the Appellees has to do with mental processes; and since Windsor had agreed to let Judge Duffey approve the deposition questions in advance, there is certainly an "arguable point."

13. Most of the case law that Windsor has found on "frivolous appeals" refers to criminal cases with pro se inmates and proceedings in forma pauperis.

> "A claim is frivolous if it is without arguable merit either in law of fact." ..."frivolous claims include claims "describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." (*Neitzke v. Williams*, 109 S. Ct. 1827, 1833 (1989); *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).)
>
> "Factual allegations are frivolous ... when they are "clearly baseless;" legal theories are frivolous when they are "indisputably meritless." (See *Sultenfuss v. Snow*, 894 F.2d 1277, 1278 (11th Cir.1990). *Battle v. Central State Hospital*, 898 F.2d 126, 129 (11th Cir. 1990).)

14. To be deemed frivolous, a litigant's arguments must truly strike beyond the pale [outside the bounds of morality, good behavior or judgment in civilized company]. (*Washington v. Alaimo*, 934 F. Supp. 1395 (S.D. Ga. 1996).)

> "[W]hen a judge calls an argument 'ridiculous' or 'frivolous,' it is absolutely the worst thing the judge could say… The judge is not telling you that you were 'wrong.' The judge is telling you that you are out of your mind." (Attorney Daniel B. Evans, *The Tax Protester FAQ*.)

15. Windsor searched "frivolous motion" and "frivolous appeal" using VersusLaw.com. Windsor's appeal does not meet any of the criteria that the Eleventh Circuit expressed in 58 cases that contained those terms. (See Exhibit C.)

> "We have found claims to be frivolous where they were 'groundless [and] baseless' and predicated upon 'untruthful, outrageous, scandalous, and slanderous' allegations," *Beard v. Annis*, 730 F.2d 741, 745 (11th Cir. 1984), or based upon "false and unsupported allegations." *Footman v. Cheung*, 139 Fed. Appx. 144, 146 (11th Cir. 2005). Other types of frivolous claims are those unsupported by any evidence at all, *In re Mroz*, 65 F.3d 1567, 1573, 1574-75 (11th Cir. 1995), or those having no "reasonable basis in fact." (*Barnes v. Dalton*, 158 F.3d, 1212 at 1214.)

> "In the cases in which we have sustained findings of frivolity, plaintiffs have typically failed to 'introduce any evidence to support their claims.'" (*Sullivan*, 773 F.2d at 1189.) (*Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 16 A.D. Cases 1774 (11th Cir. 08/04/2005).)

16. Case law on "frivolous" findings reflects the following elements: (1) whether the party's claims

are objectively frivolous (without any legal or factual basis); (2) whether the person who signed the pleadings should have been aware that they were frivolous; or (3) there is a finding of bad faith. (*Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir.1998).) Pro se Windsor spent weeks investigating the subpoena for Judge Evans, his Response to the Motion to Quash, and the Appeal of the rulings on the Motion to Quash. Windsor's research indicated that his actions were absolutely reasonable, objective, and proper before filing. There has been no finding of bad faith, nor can they be. Windsor has done NOTHING FRIVOLOUS!

17. "Something more than a lack of merit" is required ... for a claim to be considered frivolous. Id. "[I]t is not sufficient that the claim be found meritless; the claim must be without a plausible legal or factual basis and lacking in justification." (*Torres v. City of Orlando*, 264 F. Supp. 2d 1046, 1053 (M.D. Fla. 2003) (aff'd 88 Fed. Appx. 391 (11th Cir. 2003).)

18. Windsor has not submitted rambling briefs that make no attempt to address the elements requisite to obtaining reversal; has not filed numerous documents containing irrelevant arguments and authority; did not seek to relitigate issues already adjudicated; has not failed to explain how the lower tribunal erred or to present clear or cogent arguments for overturning the decision below; has not reargued frivolous positions for which sanctions had already been imposed in the trial forum; has not cited inapplicable or irrelevant authorities; misrepresenting facts or law to the court. All he has done is identify Judge Evans and Judge Duffey as corrupt federal judges, which he can prove.

19. Windsor has researched every case on "motions to quash subpoenas" on www.versuslaw.com, and he has not found a single case that indicates any courts rejected arguments similar to those offered by Windsor or where sanctions were imposed for a frivolous appeal. (See *Pollard v. Commissioner of Internal Revenue Service*, 786 F.2d 1063 (11th Cir. 04/14/1986).) (See Exhibit D hereto.)

20. This Appeal was not taken "in the face of clear, unambiguous, dispositive holdings of this and other appellate courts." (*Capps v. Eggers*, 782 F.2d 1341, 1343 (5th Cir.1986). See *McDougal v. Comm'r*, 818 F.2d 453, 455 (5th Cir.1987); *Stelly v. Comm'r*, 761 F.2d 1113, 1116 (5th Cir. 1985); *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 1579-80, 17 U.S.P.Q.2d (BNA) 1914, 1918 (Fed. Cir. 1991).)

> Sanctions on pro se litigants are appropriate if they were warned that their claims are frivolous and they were aware of "ample legal authority holding squarely against them." *Stelly v. Comm'r*, supra. (*Taylor v. Commissioner of Internal Revenue*, No. 09-60455 (5th Cir. 10/26/2009).)

21. Windsor has researched every Eleventh Circuit case involving pro se parties filing appeals such as his, and he finds no precedent for finding a pro se party to have filed a frivolous motion in attempts to reverse rulings on motions to quash. See Exhibit E.

> (See *Redeker-Barry v. United States*, No. 08-16166 (11th Cir. 06/25/2009); *Kang v. Noro-Moseley Partners*, No. 07-10310 (11th Cir. 09/04/2007); *Securities and Exchange*

Commission v. Investment Technology, Inc., 200 Fed.Appx. 858 (11th Cir. 09/14/2006); *Lawyers Title Ins. Corp. v. JDC (America) Corp.*, 52 F.3d 1575 (11th Cir. 05/31/1995); *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194 (11th Cir. 04/02/1991); *In re Grand Jury Proceeding*, 842 F.2d 1229 (11th Cir. 03/31/1988); and (*Spivey v. Zant*, 683 F.2d 881 (11th Cir. 08/16/1982).)

22. In *Spivey v. Zant*, the district court's error tainted the evidentiary hearing by denying Spivey, and the court, access to materials which might have helped resolve the factual issues which precipitated the hearing and as to which other, dispositive, evidence was not available. Judge Duffey has done the same thing by denying Windsor access to information that only Judge Evans has that will prove fraud in Civil Action 1:06-CV-0714-ODE ("MIST-1") and enable him to get the case reopened.

> "We therefore vacate the order of the district court and remand for further proceedings. Spivey must be permitted to inspect the materials in Schloth's possession which may bear on the factual issues before the court. The court must then reopen the evidentiary hearing and allow Spivey a full and fair opportunity to cross-examine Schloth based on those materials, and to present whatever additional evidence the materials divulge." (*Spivey v. Zant*, 683 F.2d 881 (11th Cir. 08/16/1982).)

C. THERE IS NO BASIS WHATSOEVER FOR THIS ORDER

23. There is no basis for this ORDER, and the ORDER is challenged on this basis.

24. This Court gave a two sentence response to the Appeal of the Motion to Quash: "In reviewing motions filed with the Court, we have also reviewed Appellant's brief, which fails to meaningfully challenge the orders on appeal. Consequently, we sua sponte DISMISS this appeal AS FRIVOLOUS AS BRIEFED." This is an erroneous decision. This is an error of fact because it failed to consider the uncontroverted facts.

25. It is interesting that the ORDER indicates that the Appellees' briefs were not considered. (Page 2 of the ORDER, fourth paragraph – Exhibit A.)

26. The Eleventh Circuit cited no case law to support the ruling; only one case was cited and erroneously – *Farese v. Scherer*, 342 F.3d 1223 (11th Cir. 08/19/2003). This case DENIED Rule 38 sanctions:

> "Fed. R. App. P. 38. "Rule 38 sanctions have been imposed against appellants who raise 'clearly frivolous claims' in the face of established law and clear facts." *Misabec Mercantile, Inc. De Panama v. Donaldson, Lufkin & Jenrette ACLI Futures, Inc.*, 853 F.2d 834, 841 (11th Cir. 1988).
>
> "Because Farese has raised valid arguments as to why the district court's dismissal should be reversed or vacated, we conclude that the Rule 38 motion is without merit and deny the motion." [emphasis added.]

27. Even the *Misabec Mercantile* case DENIED Rule 38 sanctions:

> "Rule 38 sanctions have been imposed against appellants who raise 'clearly frivolous claims' in the face of established law and clear facts. See, e.g., *United States v. A Single Family Residence*, 803 F.2d 625, 632 (11th Cir.1986); *Stubbs v. Commissioner*, 797 F.2d 936, 938-39 (11th Cir.1986). This is not such a case. We accordingly decline to impose Rule 38 sanctions." [emphasis added.]

28. The Eleventh Circuit made it clear on January 15, 2010 that sanctions under FRAP 38 are inappropriate against a pro se appellant *even if the appeal is frivolous.* (*Pollinger v. Internal Revenue Service Oversight Board*, No. 09-12295 (11th Cir. 01/15/2010). [emphasis added.]

29. So, this Court has no law to support its ruling on sanctions and no facts -- NO explanation of any type. If this Court had an explanation for how the Appeal could be considered frivolous, Windsor should have been afforded the due process right to see what they had to say and respond. This Court denied Windsor a complete record of the case, and Windsor was afforded no procedural safeguards. This Court issued this ORDER for illegal reasons.

30. Such dismissals are not favored. They are unfair to litigants. (*Franklin v. State of Oregon, State Welfare Division*, 662 F.2d 1337, 1342 (9th Cir. 1981); *Lewis v. State of New York*, 547 F.2d 4 (2d Cir. 1976).)

31. Such dismissals deny an appellant the opportunity to make legal arguments against the dismissal. The prejudice is particularly acute with respect to pro se parties ... who are generally unskilled in the art of pleading. (*Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 09/15/1983).)

D. THIS COURT'S ORDER HAS ERRORS OF LAW

32. The ORDER dismissing Windsor's Appeal as frivolous is an error of law because the Supreme Court expressed on October 20, 2009 that courts err in disposing of claims without explanation of any sort. (*Corcoran v. Levenhagen*, 558 U.S. ___ (2009), (08-10495).)

33. The decision to deny the appeal is an error of law because, as a general rule, any individual competent to be a witness may be compelled to testify as to facts within his or her knowledge that are relevant to a matter before the court. (See *Blair v. United States*, 250 U.S. 273, 39 S. Ct. 468, 63 L. Ed. 979 (1919); *Standard Packaging Corp. v. Curwood, Inc.*, 365 F. Supp. 134 (N.D.Ill.1973).)

E. THIS COURT'S ORDER IS A VIOLATION OF WINDSOR'S CONSTITUTIONAL RIGHTS

34. This Court has violated Windsor's Constitutional rights and has denied due process. This Court's cursory treatment of Windsor's Appeal does not comport with fair procedure and lacks the equality that is required by the Constitution and its amendments.

35. Windsor has been denied a fair judge at all

stages of the proceedings. Judge Evans and Judge Duffey violated Windsor's legal rights guaranteed in the First, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the U.S. Constitution under color of law. The 11th Circuit has done so as well.

36. Windsor submits that this Court issued this ORDER for the sole purpose of damaging Windsor because he has sued the Eleventh Circuit and has requested leave of court to sue each of the judges that issued this ORDER. These judges as much as said so.

37. Judges Carnes, Barkett, and Hull must recuse themselves because they have a personal interest in the outcome of this appeal.

38. Judges Carnes, Barkett, and Hull have become accessories after the fact and conspirators with Judge Duffey and Judge Evans in obstruction of justice. The ORDER of this Court denies Windsor access to the information that will enable him to recover $1 million "stolen" from him as the result of the fraud upon the courts in MIST-1.

F. THIS COURT DISCRIMINATED AGAINST WINDSOR BECAUSE HE IS PRO SE

39. This Court has discriminated against Windsor because he is pro se. This Court has also discriminated against him because he has had the audacity to take action against federal judges.

40. Windsor submits that his experience is that judges in the Northern District of Georgia and the Eleventh Circuit ROUTINELY violate the law and twist

the facts and the law to accomplish their own improper purposes. These judges have apparently decided that they will take the law into their own hands and do whatever they please. All of the federal judges in Atlanta that Windsor has encountered are dishonest and corrupt.

41. By calling this Appeal frivolous, this Court must prove that the legal points on pages 22-26 and 60-67 in Windsor's Appeal are not arguable on their merits. (*Anders v. California*, supra.)

42. It is not frivolous for Windsor to claim the ERRORS OF LAW cited on pages 28-50 of the Appellant's Brief as these are arguable on their merits.

43. It was not frivolous for Windsor to claim the ERRORS OF FACT cited on pages 27, 50-60 of the Appellant's Brief.

G. THESE JUDGES ISSUED THIS ORDER BECAUSE THE ELEVENTH CIRCUIT IS CORRUPT.

44. There is nothing wrong with the Appeal Brief. The problem is that Judges Carnes, Barkett, and Hull are corrupt. They don't like it that Windsor is exposing the corruption in the federal court system in Atlanta, so they are taking corrupt action to damage him.

45. Windsor was shocked when the Eleventh Circuit denied the appeals of Alcatraz and Windsor at Summary Judgment. Alcatraz cited six primary errors with 13 subsidiary errors. Windsor cited an additional 10 errors. Judge Hull, Judge Fay, and Judge Dubina did not address the points of error, and the ruling makes absolutely no sense to Windsor.

46. Windsor asked that this Court not let that happen again. But Judges Carnes, Barkett, and Hull have proven that they are dishonest.

47. Judges of the Eleventh Circuit have proven their own dishonesty and corruption again and again in these actions. Windsor believes every order issued has been erroneous. All Eleventh Circuit orders involving Windsor are referenced and incorporated herein as if attached hereto.

48. The Affidavit of William M. Windsor, attached hereto as Exhibit F and referenced and incorporated herein, includes information that is not included in this Motion to Vacate and Motion to Reconsider due to page limits.

49. Windsor asks that this Court reconsider the Motion to Disqualify all Eleventh Circuit and Northern District of Georgia judges because there is an appearance of bias that requires recusal.

50. Windsor asks that this Court reconsider the Motion for Change of Venue so this Appeal may be moved to another Circuit where the judges will not be friends and associates of Judge Evans. Windsor cited 7 cases. By refusing the change of venue and disqualification of the judges, this Court is denying due process to Windsor and is failing to ensure justice in this case. This Court screams "appearance of bias."

51. Plaintiffs' filings relative to this Appeal was filled with false statements and statements not supported by the record.

52. By turning a blind eye to the criminal activity and grossly violating Windsor's Constitutional rights, this Court is a disgrace to the judicial system. This Court is an accomplice to the criminal acts of the Appellees and their attorneys.

53. The Appellees did not quote a single valid case to support their Motion for Sanctions. The Appellees did not provide any valid case law authority for their FRIVOLOUS motion for sanctions.

54. It is well-established that Courts will compel judicial testimony when it is needed and that discovery is absolutely permissible post-discovery.

55. This Court claimed Windsor provided no legal basis for his Motion to Disqualify the Judges. Windsor clearly identified the legal basis in his motion and in his Reply to the Response of Judge Evans. Windsor assumes 28 U.S.C. 144 and 28 U.S.C. 455 are also to be considered.

56. Judge Evans has information material to civil proceedings. She is obligated by law to testify.

57. When Windsor filed his Appeal, he did not have access to research information that he now has. As a result, some important case law was unknown to him that supports the requirement of Judge Evans to give testimony:

> Neither are we aware of any rule generally exempting a judge from the normal obligation to respond as a witness when he has information

material to a criminal or civil proceeding. Cf. *United States v. Nixon*, 418 U.S. 683, 705-707 (1974). (*Dennis v. Sparks et al*, 101 S. Ct. 183, 449 U.S. 24 (U.S. 11/17/1980).)

There is no constitutionally based privilege immunizing judges from being required to testify about their judicial conduct. The doctrine of judicial immunity does not excuse a judge from responding as a witness when his co-conspirators are sued. (*Dennis v. Sparks et al*, 101 S. Ct. 183, 449 U.S. 24 (U.S. 11/17/1980).)

Whatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth. Because of the key role of the testimony of witnesses in the judicial process, courts have historically been cautious about privileges. Mr. Justice Frankfurter, dissenting in *Elkins v. United States*, 364 U. S. 206, 364 U. S. 234 (1960), said of this:

"Limitations are properly placed upon the operation of this general principle only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." (*In re Suspension to Practice Before United States District Court of Southern District of Iowa of John D. Randall John D. Randall*, 640 F.2d 898 (8th Cir. 01/21/1981).)

Moreover, the Fifth Amendment also guarantees that no person shall be deprived of liberty without due process of law. It is the manifest duty of the courts to vindicate those guarantees, and to accomplish that it is essential that all relevant and admissible evidence be produced. Page 418 U. S. 711 United States v. Nixon, 418 U.S. 683, 705-707 (1974). (*In re Suspension to Practice Before United States District Court of Southern District of Iowa of John D. Randall John D. Randall*, 640 F.2d 898 (8th Cir. 01/21/1981).)

Testimonial exclusionary rules and privileges contravene the fundamental principle that "'the public . . . has a right to every man's evidence.'" (*United States v. Bryan*, 339 U.S. 323, 331 (1950).) As such, they must be strictly construed and accepted "only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." *Elkins v. United States*, 364 U.S. 206, 234 (1960) (Frankfurter, J., dissenting). Accord, *United States v. Nixon*, 418 U.S. 683, See also 8 J. Wigmore, Evidence § 2192 (McNaughton rev. 1961); 4 The Works of Jeremy Bentham 321 (J. Bowring ed. 1843). (*Trammel v. United States*, 100 S. Ct. 906, 445 U.S. 40 (U.S. 02/27/1980).)

Evidentiary privileges in litigation are not favored. See *Elkins v. United States*, 364 U.S. 206, 234 (1960) (Frankfurter, J., dissenting): "Limitations are properly placed upon the operation of this general principle [of no testimonial privilege]

only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." See also 8 J. Wigmore, Evidence § 2192 (McNaughton rev. 1961); 4 The Works of Jeremy Bentham 321 (J. Bowring ed. 1843). *Herbert v. Lando et al*, 99 S. Ct. 1635, 441 U.S. 153 (U.S. 04/18/1979).

In *Nero Trading's* case, the district court's failure to articulate its reasons for forgoing an evidentiary hearing and denying Nero Trading's motion to quash leads us to conclude that Nero Trading was not afforded a meaningful opportunity to question the Service concerning its reasons for issuing the summonses. The district court refused a limited adversarial hearing and issued a perfunctory order with only passing reference to any legal standard and no reference at all to either the merits of the Service's prima facie case or Nero Trading's claims in rebuttal. (*Nero Trading, LLC v. United States, Dep't of the Treasury*, 570 F.3d 1244 (11th Cir. 06/10/2009).)

H. THIS COURT ERRED IF IT CLAIMS WINDSOR FILED THE APPEAL FOR ANY IMPROPER PURPOSE

58. Windsor has stated repeatedly under oath, under penalty of perjury, and before a notary that he has never presented any motions for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Every motion that Windsor has filed has been supported by a sworn affidavit. (See Affidavit of William M. Windsor attached

hereto as Exhibit F. Windsor will be happy to take a polygraph test to prove this. This Court has no factual justification for claiming improper purpose (¶11. c. above), so this Court cannot claim this as justification for the ORDER.

I. THIS COURT ERRED IF IT CLAIMS WINDSOR'S FACTS WERE NOT SUPPORTED BY THE RECORD.

59. All material facts are fully supported by the record in Windsor's Appeal. Everything was sworn under penalty of perjury before a notary. Windsor's facts were never controverted in any manner; the Plaintiffs did not file a single affidavit. This Court has no factual justification for claiming facts were not supported (11. b. above), so this cannot be claim as the justification for the ORDER.

60. The District Court did not find Windsor's Response to the Motion to Quash frivolous, nor did the District Court find Windsor's Motion for Reconsideration of the Motion to Quash frivolous. If those disputed motions were not frivolous, the Appeal could not be frivolous. Pro se Windsor could not possibly anticipate that this Court would find something frivolous that the District Court did not question and that his research proves should be decided in his favor.

61. This Court has failed to apply the proper legal standard and has failed to follow proper procedures in making this determination, and it has based this decision upon unknown factors that are clearly erroneous.

62. This Court has no right whatsoever to assume that Judge Evans and Judge Duffey are telling the truth. They aren't, and Windsor has proven it. (See Windsor's Appeal Brief, P 20, 21, 24, 25, 26, 27, 28, 29.)

J. THIS COURT ERRED IF IT CLAIMS WINDSOR'S MOTION HAS A LACK OF LEGAL MERIT.

63. This Court cannot claim that Windsor's Appeal has a lack of legal merit (II. A. above). Windsor cited 35 cases, 17 statutes, 13 rules, two treatises, and the Constitution in his Appeal. An additional 80 cases are cited herein.

64. This Court erred by failing to properly consider the cases Windsor cited.

K. THIS COURT ERRED IF IT CLAIMS JUDGES HAVE IMMUNITY.

65. Judges are not immune from depositions, from their criminal acts, and from obstructing justice by withholding vital evidence.

66. A Memorandum of law on Judicial Immunity that Windsor filed in another court is attached hereto as Exhibit G and is referenced and incorporated herein.

For the foregoing reasons, Windsor respectfully requests that this Court vacate its ORDER dated February 25, 2010 and reconsider its ORDER based upon the grounds enumerated herein and deny Plaintiffs' Motion for Sanctions.

Submitted, this 8th day of March, 2010.

William M. Windsor

/s/_____
William M. Windsor
Pro Se

(Certificates of Compliance, Service, and Interested Parties have been omitted to reduce the size and cost of this Appendix.)

APPEAL DOC.NO. 09-14735-D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC.,
Defendants; and WILLIAM M. WINDSOR, Appellant
and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Case No. 1:09-CV-01543-WSD
Judge William S. Duffey, Jr.

MOTION FOR HEARING

William M. Windsor
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PRO SE FOR DEFENDANT/APPELLANT,
WILLIAM M. WINDSOR

1. Windsor demands a Hearing on this Court's order dated February 25, 2010 dismissing Windsor's Appeal; this Court's order granting sanctions pursuant to FRAP 38 ("ORDER" – Exhibit A hereto); and Windsor's Motion to Vacate Order filed March 8, 2010. The Appeal ("Appeal") is from two orders of the United States District Court, Northern District of Georgia, Civil Action Number1:09-CV-01543-WSD entered June 30, 2009 and September 2, 2009 ("Appealed Orders" – Exhibit B hereto). The Second 2010 Affidavit of William M. Windsor ("Aff #2010-2" is attached hereto as Exhibit C. (Aff #2010-2 ¶11.)

WINDSOR DEMANDS A HEARING

2. Windsor demands a hearing. Due process mandates a hearing. The Eleventh Circuit has indicated that Windsor is entitled to a hearing in cases such as this. (Aff #2010-2 ¶12.)

3. The need for a hearing in this case is even more critical because this Court has issued a grossly inadequate ORDER; this Court is permitting perjury and fraud upon the courts by Plaintiffs; and this Court is committing crimes through its action and inaction in this Appeal. (Aff #2010-2 ¶13.)

4. Windsor is being denied due process. Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property or liberty interest. (*Zipperer v. City of Fort Myers*, 41 F.3d 619, 623 (11th Cir. 1995).) (Aff #2010-2 ¶14.)

5. Our founding fathers expressed noble principles in the Constitution -- freedom, justice, and the protection of individual rights. However, in the administration of the laws, something has gone dreadfully wrong. The lofty principles have been usurped by officials with improper intentions. The United States of today is not the benign society that the founding fathers aspired to create. (Aff #2010-2 ¶15.)

6. Our founding fathers did not intend for judges to be able to lie, cheat, and help others "steal" from parties they are sworn to protect through fairness and impartiality. But this is exactly what Judge Duffey, Judge Evans, and the judges of the Eleventh Circuit have done. (Aff #2010-2 ¶16.)

> "Few more serious threats to individual liberty can be imagined than a corrupt judge. Clothed with the power of the state and authorized to pass judgment on the most basic aspects of everyday life, a judge can deprive citizens of liberty and property in complete disregard of the Constitution. The injuries inflicted may be severe and enduring." (*Judicial Immunity vs. Due Process*, Robert Craig Waters, *Cato Journal*, Vol.7, No.2 (Fall 1987).)

7. The guarantee of Constitutional rights is being illegally revoked by this Court. (Aff #2010-2 ¶17.)

8. Windsor has tried repeatedly for close to a year to obtain justice. In *every instance* Windsor's appeals for justice and protection of the laws have been rejected in favor of a cover up of attorney and judicial wrongdoing and protection of the lawbreaking officers of

the court. In *every instance* Windsor's rights, ostensibly protected by the Constitution and the laws, have been scorned, and Windsor's appeals to the authorities have been ignored or rejected with contempt. In *every instance* where legal actions were filed with the courts, the courts have ignored the crimes. The courts have failed to ever allow Windsor to be heard and to present his evidence or examine the evildoers. The courts have never even considered the facts and the overwhelming evidence that Windsor has amassed. Instead, federal judges have committed one crime after another while violating their oaths of office and the Code of Judicial Conduct. (Aff #2010-2 ¶18.)

9. Although evidence of the crimes was provided to various authorities of the federal government, officers from these authorities failed to perform their legal duties to investigate. Each official to whom the crimes were presented had a statutory duty, the capacity, and the authority, to address the crimes. Each official willfully failed to act and instead covered up the crimes. (Aff #2010-2 ¶19.)

10. On July 31, 2006, the Eleventh Circuit issued its opinion in *Amlong & Amlong, P.A. v. Denny's, Inc.*, 457 F.3d 1180 (11th Cir. 2006), as amended Oct. 10, 2006, in which the court noted that when under the threat of sanctions, the person threatened is entitled to an evidentiary hearing. Id at 1193. The issue presented itself again in 2007, and the district court granted the application for a hearing, and the Eleventh Circuit affirmed. (*Hudson v. International Computer Negotiations, Inc.*, 499 F.3d 1252, 19 A.D. Cases 1249 (11th Cir. 09/17/2007).) (Aff #2010-2 ¶20.)

11. This Court is supposed to make its rulings based upon legal evidence and to clearly state its factual and legal findings in its orders. This Court has not done so. Windsor must have a fair opportunity to challenge the "evidence" presented and to present evidence in defense, including the right to cross examine witnesses and require proper authentication and form for documentary evidence at a formal evidentiary hearing. (Aff #2010-2 ¶21.)

> ...a party threatened with sanctions is entitled to a hearing. *Reynolds v. Roberts*, 207 F.3d 1288, 1302 (11th Cir. 2000); *Amlong & Amlong v. Denny's Inc.* No. 04-14499 (11th Cir. 07/31/2006).

12. Windsor has provided uncontroverted proof in the record of thousands of instances of false testimony, false pleadings, and tampering with evidence by the Plaintiffs and their attorneys. Windsor has provided uncontroverted proof of false statements and perjury in the documents filed by Plaintiffs in Windsor's Appeal. Windsor must be able to cross examine these witnesses. (*Howell Mill/Collier Assoc. v. Pennypacker's*, 194 Ga. App. 169, 171 (2) (390 SE2d 257); *Mitcham v. Blalock*, 214 Ga. App. 29, 31 (2), 32; *Citadel Corp. v. All-South Subcontractors*, 217 Ga. App. 736, 737 (1), 738 (458 SE2d 711). Under these cases and the standards of the Federal Rules of Evidence, significant portions of Plaintiffs' filings should be excluded from consideration. (Aff #2010-2 ¶22.)

13. Plaintiffs' Attorney, Mr. Carl Hugo Anderson, has committed multiple counts of perjury in his filings with this Court related to Windsor's Appeal.

Windsor must be given the opportunity to prove this perjury by examining Mr. Anderson. The perjury of Mr. Anderson should be more than sufficient to cause this Court to vacate its ORDER awarding sanctions. (Aff #2010-2 ¶23.)

14. This Court must conduct a hearing, refer this to an impartial judge, or refer this motion to a magistrate judge to conduct an evidentiary hearing, make findings of fact and conclusions of law, and file a Report and Recommendation. Someone must weigh evidence. Judge Duffey never conducted a hearing. Judge Evans never conducted a hearing. The Eleventh Circuit never conducted a hearing. (See *Amlong & Amlong, P.A. v. Denny's, Inc.*, 457 F.3d 1180 (11th Cir. 2006).) (Aff #2010-2 ¶24.)

> When threatened with sanctions, the party threatened is entitled to a hearing. (***Reynolds v. Roberts***, 207 F.3d 1288, 1302 (11th Cir. 2000).) (See ***Jolly Group, Ltd. v. Medline Indus., Inc.***, 435 F.3d 717, 720 (7th Cir. 2006) (citation omitted) and ***Buccaneer Hotel, Inc.***, 188 F.3d 172, 183 (3d Cir. 1999), reh'g denied, 202 F.3d 253 (3d Cir. Oct. 21, 1999) (table entry, no WL citation).) (See ***Bernstein v. Boies, Schiller & Flexner LLP***, No. 06-14013 (11th Cir. 06/08/2007).)

15. The Eleventh Circuit has clearly stated that sanctions such as this Court has ordered are "in the nature of civil contempt" and require a hearing. (Aff #2010-2 ¶25.)

> Sanctions designed to compensate one party for expenses incurred due to the opposing party's

misconduct is in the nature of civil contempt, requiring notice and the opportunity to be heard prior to the award. (*Campos v. City of Naples*, 202 Fed.Appx. 381 (11th Cir. 10/25/2006).) (*B.L. Harbert Intern., LLC v. Hercules Steel Co.*, 441 F.3d 905, 914 (11th Cir. 2006) (See *Kaplan v. Daimler-Chrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003); *Oakes v. Horizon Financial, S.A.*, 259 F.3d 1315, 1320 n.5 (11th Cir. 2001).

Even the award of sanctions under the court's inherent power must "comply with the mandates of due process." (*Chambers v. NASCO, Inc.*, 501 U.S. 32, 49-50 (1991); *Roadway Express v. Piper, el al*, 100 S. Ct. 2455, 447 U.S. 752 at 764 (U.S. 06/23/1980); *In re Mroz*, 65 F.3d at 1575-76; *Thomas v. Tenneco Packaging Co., inc.*, 293 F.3d 1306 (11th Cir. 06/13/2002); *Boddie v. Connecticut*, 401 U.S. 371, 379, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971).)

16. A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, and to offer testimony. (*United States v. Frazier*, No. 01-14680 (11th Cir. 10/15/2004).) (See also *United States v. Owen*, 415 F.2d 383 (8 Cir. 1969); *Chernekoff v. United States*, (9 Cir. 1955) 219 F.2d 721; *United States v. Cummins*, 425 F.2d 646, 649, (8 Cir. 1970); *Gonzales v. United States*, 348 U.S. 407, 75 S. Ct. 409, 99 L. Ed. 467 (1955).) (Aff #2010-2 ¶26.)

To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends. (*Hovey V. Elliott*, 17 S. Ct. 841, 167 U.S. 409 at 414 (U.S. 05/24/1897).) *(See also Windsor v. McVeigh*, 93 U.S. 274; *Holden v. Hardy*, 169 U.S. 366, 389-90, 18 S.Ct. 383, 387 (1898). "[B]y 'the law of the land' is intended 'a law which hears before it condemns.'" *Powell v. Alabama*, 287 U.S. 45, 68, 53 S.Ct. 55, 64 (1932) (citation omitted). (*United States v. Frazier*, No. 01-14680 (11th Cir. 10/15/2004); *In re Oliver*, 333 U.S. 257, 273, 68 S.Ct. 499, 507-08 (1948); *Snyder v. Massachusetts*, 291 U.S. 97, 116, 54 S.Ct. 330, 336 (1934); *United States v. Frazier*, No. 01-14680 (11th Cir. 10/15/2004); *In re Noell*, 93 F.2d 5 (8th Cir. 11/21/1937); *Hammond Packing Company v. State of Arkansas*, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530; *Reynolds v. Cochran*, 365 U.S. 525, 81 S. Ct. 723, 5 L. Ed. 2d 754; *Council of Federated Organizations v. Mize*, 339 F.2d 898 (5th Cir. 12/22/1964); *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 17 L. Ed. 531 (1864).)

Typically, we require the district court to hold an evidentiary hearing on damages.... See *United Artists Corp. v. Freeman*, 605 F.2d 854, 957 (5th Cir.1979).

17. Windsor will utilize the hearing to challenge the basis and reasonableness of such proposed sanctions. (Aff #2010-2 ¶27.)

18. Windsor will also utilize the hearing to establish that this Court has violated several criminal statutes. (Aff #2010-2 ¶28.)

19. The Plaintiffs and their attorneys are dishonest. Windsor will prove at the hearing that the Plaintiffs have dirty hands. (Aff #2010-2 ¶29.)

20. At the hearing on this motion, the Court will find that sanctions must be imposed against the Plaintiffs because they have frivolously denied factual allegations that are true and have made factual allegations that are false. (See ***Williams v. R.W. Cannon, Inc.***, No. 08-60168-CIV-UNGARO/SIMONTON (S.D.Fla. 09/24/2008).) (Aff #2010-2 ¶30.)

21. At the hearing, Windsor will address and present evidence and testimony relative to bad faith. (Aff #2010-2 ¶31.)

22. Windsor will show at the hearing that the facts before this Court do not warrant sanctions. (Aff #2010-2 ¶32.)

23. Windsor will show at the hearing that the Plaintiffs have not provided the information necessary to support a claim. (Aff #2010-2 ¶33.)

24. Windsor will show at the hearing that any attempt by the Plaintiffs to recover attorneys' fees is barred by collateral estoppel. (Aff #2010-2 ¶34.)

25. Windsor has stated repeatedly in his declarations filed with this Court that he does not have a frivolous bone in his body and has never filed any motions that were frivolous. Windsor will provide proof of this at the hearing as well as testimony from attorneys and other special witnesses. (Aff #2010-2 ¶35.)

26. Windsor objects to the affidavits provided by the Plaintiffs. Mr. Carl Hugo Anderson is a known perjuror. He must not be allowed to testify through affidavits. Cross examination is mandatory with this liar. (Aff #2010-2 ¶36.)

27. Windsor needs a reasonable period of time following the hearing to file an amended response to the ORDER and information regarding sanctions. (Aff #2010-2 ¶37.)

WINDSOR DEMANDS DUE PROCESS

28. Windsor objects because this Court has previously violated Windsor's Constitutional rights to due process. (Aff #2010-2 ¶38.)

29. The courts have denied Windsor due process for four years. Windsor has NEVER been granted an evidentiary hearing and has been denied a neutral judge. (Aff #2010-2 ¶39.)

30. Procedural due process requires notice and the opportunity to be heard. Windsor has been denied both. (Aff #2010-2 ¶40.)

"An essential principle of due process is that a deprivation of life, liberty, or property `be preceded by notice and opportunity for hearing appropriate to the nature of the case' " (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950)); *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 617 (1993) ("due process requires a `neutral and detached judge in the first instance' " (quoting *Ward v. Monroeville*, 409 U. S. 57, 61-62 (1972)).

"For more than a century the central meaning of procedural due process has been clear: `Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' " *Fuentes v. Shevin*, 407 U. S. 67, 80 (1972) (quoting *Baldwin v. Hale*, 1 Wall. 223, 233 (1864); *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965) (other citations omitted)). These essential constitutional promises may not be eroded. (*Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 542 U.S. 507, 159 L.Ed.2d 578 (U.S. 06/28/2004).) (See *Holden v. Hardy*, 169 U.S. 366, 389; *Galpin v. Page*, 18 Wall. 350, 368-369; *Cooke v. United States*, 267 U.S. 517, 537; *Ozie Powell v. Alabama Haywood Patterson v. Same Charley Weems and Clarence Norris v. Same*, 53 S. Ct. 55, 287 U.S. 45 (U.S. 11/07/1932).)

It is true, of course, that "the fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the

constitutional protection is invoked." (*Anderson National Bank v. Luckett*, 321 U.S. 233, 246.) (See *Hagar v. Reclamation District*,111 U.S. 701, 708; *Davidson v. New Orleans*, 96 U.S. 97, 107; *Fong Yue Ting v. United States. Wong Quan v. United States. Lee Joe v. United States*, 13 S. Ct. 1016, 149 U.S. 698 (U.S. 05/15/1893).)

As the Supreme Court noted in *Mullane v. Central Hanover Bank & Trust, Co.*, "'[t]he fundamental requisite of due process of law is the opportunity to be heard.'" 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914).) (See *In re Oliver*, 333 U.S. 257, 273 (1948). See, e. g., *Joint Anti-Fascist Committee v. McGrath*, 341 U.S., at 143, 164-165, 171-172, 178, 185 (concurring opinions of Black, Frankfurter, DOUGLAS, and Jackson, JJ.); *Cole v. Arkansas*, 333 U.S. 196, 201 (1948); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Morgan v. United States*, 304 U.S. 1, 18 (1938); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914); In *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950); *Mathews*, 424 U.S. at 348, 96 S. Ct. at 909; *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950); (*Kleiner v. First National Bank*, 751 F.2d 1193 (11th Cir. 01/31/1985).)

31. This Court never gave any notice to Windsor of any specific conduct that it considered to be potentially sanctionable. (See *Allapattah Servs., Inc. v. Exxon Corp.*, 372 F.Supp.2d 1344, 1371 (S.D. Fla. 2005); *Byrne v. Nezhat*, 261 F.3d 1075, 1133-34 (11th

Cir. 2001); ***Riggs v. Dayco Products, Inc.***, No. 1:05CV91 (W.D.N.C. 02/22/2006).) (Aff #2010-2 ¶41.)

WINDSOR DEMANDS DISCOVERY

32. Windsor moves/demands discovery. (Aff #2010-2 ¶42.)

33. Testimony is required and evidence is needed from people who will not provide affidavits. Windsor needs to be able to subpoena attorneys who have refused to provide affidavits out of fear of reprisals from federal judges in Atlanta. Windsor also needs to be able to subpoena others to give testimony. Windsor needs to be able to question Plaintiffs' Attorneys as it is impossible to address the issues in any other manner. (Aff #2010-2 ¶43.)

34. Windsor can obtain evidence in a deposition or at a hearing that he cannot obtain in affidavits. This Court will be denying Windsor's right to defend himself properly if discovery is denied. (Aff #2010-2 ¶44.)

35. Windsor demands that this Court lift the seal on Doc. 168 in Civil Action No. 1:06-CV-0714-ODE ("MIST-1") as the documents are no longer a secret and will provide evidence that will prove fraud by Plaintiffs and Judge Evans. (See MIST-1 Doc. 561.) (Aff #2010-2 ¶45.)

36. There is no reason for the Court to keep these documents [MIST-1 Doc.168] under seal. (Aff #2010-2 ¶46.)

> . . . [W]e see no reason why the absence of a motion of a party to the litigation or some third party requesting that a seal or protective order be lifted should remove a federal court's ability to monitor and modify its previous orders in exercise of its "supervisory power over its own records and files." (*Gambale v. Deutsche Bank AG*, 377 F.3d 133, 141 (2d Cir. 2004) (citations omitted).)
>
> The law is clear that it is within the Court's discretion, sua sponte, to unseal the record. (See *In re Cendant*, 260 F.3d at 192.) It is also beyond question that this Court retains the power to modify or lift seal orders that it has previously granted. (*Pansy v. Borough of Stroudsburg*, 23 F.3d 772, at 784-785 (3d Cir. 1994).) Furthermore, because there exists an antecedent, extremely broad, right of access to judicial records and proceedings promoting "a pervasive common law right 'to inspect and copy public records and documents, including judicial records and documents," *In re Cendant*, 260 F.3d at 192, this Court intends to order the unsealing of the record. (*Zurich American Ins. Co. v. Rite Aid Corp.*, 345 F.Supp.2d 497 (E.D.Pa. 11/23/2004).)

37. Whatever is under seal should establish either that Maid committed fraud upon the courts by filing bogus documents, or that Judge Evans withheld documents that were extremely relevant to MIST-1. In either case, this evidence should prove that the order to quash the subpoena was improper. (Aff #2010-2 ¶47.)

38. There is no justification for keeping the

contents secret from Windsor. Windsor has obtained the valid documents directly from The Niagara Parks Commission and the State of New York. Copies of these contracts were previously filed in MIST-1 by Windsor and were provided to Judge Evans. Since Windsor has the contracts, so there is no confidentiality justification. In addition, these documents have now been made public by the news media, and these documents are available for review or download on the Internet. (Aff #2010-2 ¶48.)

39. There is not "good cause" to keep these documents under seal. These documents cannot be used for improper purposes. Lifting the seal will not disclose any corporate secrets or information as the documents are now public. Lifting the seal will not protect scandalous or defamatory matter as there is none in these documents. (Aff #2010-2 ¶49.)

> Under the common law, there is a well-established presumption of public access to judicial documents. (See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978).) This public right of access is codified for bankruptcy cases in 11 U.S.C. § 107(a), which provides that all papers filed in a bankruptcy case are public records open to examination, except as specifically provided in the statute. (See *Gitto Global Corp.*, 422 F.3d at 6-7; *In re Crawford*, 194 F.3d 954, 960 (9th Cir. 1999); William T. Bodah and Michelle M. Morgan, "*Protective Orders in the Bankruptcy Court: The Congressional Mandate of Bankruptcy Code Section 107 and its Constitutional Implications*," 24 Hastings Const. L. Q. 67 (Fall 1996).) The

statute provides for two exceptions to this broad right of public access: the court may (and, on motion of a party in interest, shall) (1) protect an entity with regard to certain commercial secrets and information, or (2) "protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title." (Lawrence P. King, *Collier on Bankruptcy* ¶ 107.03[1][b] (15th ed. Rev. 2007).) "...in light of the public's common law presumptive right of access to judicial documents, the court has the authority to lift a protective order or seal on documents in its files, even in the absence of a motion.

[A] district court can modify a protective order when a third party requests judicial documents after the parties have filed a stipulation of dismissal pursuant to settlement. (*Gambale v. Deutsche Bank*, 377 F.3d 133 (2nd Cir. 2004).)

The existence of a common law right of access to judicial records is beyond dispute. (See *Littlejohn v. Bic Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988); *United States v. Criden*, 648 F.2d 814, 819 (3d Cir. 1981) (Criden I).) This Court has made it clear that our "strong presumption" of openness does not permit the routine closing of judicial records to the public. The party seeking to seal any part of a judicial record bears the heavy burden of showing that "the material is the kind of information that courts will protect" and that "disclosure will work a clearly defined and serious injury to the party seeking closure." (*Publicker Indus., Inc. v. Cohen*,733 F.2d 1059,

1071 (3d Cir. 1984); *Miller v. Indiana Hosp.*, 16 F.3d 549 (3d Cir. 02/23/1994).)

40. It has been a violation of Windsor's Constitutional rights to due process as well as First Amendment and common law rights that Judge Evans has kept these documents under seal. (Aff #2010-2 ¶50.)

There is both a First Amendment and common-law right to inspect judicial records. (See *United States v. Smith*, 776 F.2d 1104, 1111 (3d Cir. 1985) (First Amendment).) While the public's right to inspect judicial records may give way in certain circumstances to other, more pressing interests, such as the Government's interest in maintaining confidentiality in order to successfully build a criminal case, "[s]uch circumstances will be rare . . . and the balance of interests must be struck with special care." (*Waller v. Georgia*, 467 U.S. 39, 45 (1984).)

41. Windsor's most basic legal rights are at stake here. (Aff #2010-2 ¶51.)

"The operations of the courts and the judicial conduct of judges are matters of utmost public concern," (*Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839, 98 S. Ct. 1535, 1541 (1978); (*Romero v. Drummond* (11th Cir. 2007).)

Even if the initial sealing was justified, when there is a subsequent motion to remove such a seal, the district court should closely examine whether circumstances have changed sufficiently to allow

> the presumption allowing access to court records to prevail. In this case, we see no reason to maintain the impoundment." (*Miller v. Indiana Hosp.*, 16 F.3d 549 (3d Cir. 02/23/1994).)

42. Judge Duffey, Judge Evans, and this Court have no legal right to conceal evidence. There is a legal obligation to disclose. The actions of these judges constitute obstruction of justice. (Aff #2010-2 ¶52.)

> "The post-judgment discovery by a defeated litigant of evidence establishing, clearly and convincingly, that the prevailing party gave false testimony which likely affected the result may provide a basis for vacating a judgment under Rule 60(b). E.g., 11 CHARLES A. WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* §§ 2860-61 (1995); see *Clarkson Co. v. Shaheen*, 544 F.2d 624, 631 (2d Cir. 1976) (requirement of clear and convincing proof).)

43. The Middle District of Georgia has ruled that discovery can be obtained from judges in matters involving disqualification, one of the important issues in this civil action: (Aff #2010-2 ¶53.)

> "I conclude that the discovery mechanisms of the Federal Rules of Civil procedure would be available in an appropriate case to a party who contemplates filing a motion for disqualification of the presiding judge pursuant to 28 U.S.C. §§ 144 or 455(a), and who wishes to establish relevant facts from witnesses other than the presiding judge such as, in this instance, Judges

Fitzpatrick and Elliott." (*Cheeves v. Southern Clays, Inc.*, 797 F. Supp. 1570 (M.D.Ga. 06/17/1992.)

44. Windsor has provided extensive proof of fraud and dishonest activity in this case. (See MIST-1 Doc.462, incorporated herein as if attached hereto.) The documents under seal will provide proof of a specific act of fraud. (Aff #2010-2 ¶54.)

> "...after final judgment has entered, our strong interest in the finality of judgments leads courts to intervene in a search for evidence of fraud only if there has been some showing that a fraud actually has occurred. See *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1118-22 (6th Cir. 1976) (discovery in aid of a motion attacking a final judgment on the basis of fraud should be permitted only if there is some evidence of fraud); see also *Midwest Franchise Corp. v. Metromedia Restaurant Group, Inc.*, 177 F.R.D. 438, 440 (N.D. Iowa 1997) (prima facie showing of fraud required); *United States ex rel. Free v. Peters*, 826 F. Supp. 1153, 1154 (N.D. Ill. 1993) (same). (*Duhaime v. John Hancock Mutual Life Insurance Co.*, 183 F.3d 1 (1st Cir. 06/28/1999).)

45. Discovery may certainly be appropriate in an effort to prove fraud upon the court. (*H. K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115 (6th Cir. 06/09/1976).) (Aff #2010-2 ¶55.)

46. Judge Evans has violated 18 USC § 1512(c), and she shall be fined under this title or

imprisoned not more than 20 years, or both. (Aff #2010-2 ¶56.)

THIS COURT DISCRIMINATED AGAINST WINDSOR BECAUSE HE IS PRO SE

47. Windsor submits that this Court has discriminated against him because he is pro se. This Court has also discriminated against him because he has had the audacity to take action against federal judges. (Aff #2010-2 ¶57.)

48. Windsor submits that his experience is that judges in the Northern District of Georgia and the Eleventh Circuit ROUTINELY violate the law and twist the facts and the law to accomplish their own improper purposes. These judges have apparently decided that they will take the law into their own hands and do whatever they please. All of the federal judges in Atlanta that Windsor has encountered are dishonest and corrupt. (Aff #2010-2 ¶58.)

49. Pro Se Windsor is being denied equal protection, a violation of his Constitutional rights. (Aff #2010-2 ¶59.)

50. Windsor's Motion to Vacate and Motion for Reconsideration filed on March 8, 2010 is referenced and incorporated herein as if attached hereto as are all documents filed in this Appeal. (Aff #2010-2 ¶60.)

WHEREFORE, Windsor respectfully requests that the Court do as follows:

1) Schedule the evidentiary hearing;

Issue an order giving Windsor the ability to conduct depositions prior to the hearing;

2) Issue an order lifting the seal on MIST-1 Doc. 168;

3) Grant Windsor a jury trial; and

4) Deny any fees to the Plaintiffs, and grant such sanctions and other relief to Windsor as the Court deems appropriate.

Submitted, this 8th day of March, 2010.

William M. Windsor

/s/_____
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(Certificates of Compliance, Service, and Interested Parties have been omitted to reduce the size and cost of this Appendix.)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-14735-DD

MAID OF THE MIST COTRPORATION,
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Plaintiffs-Appellees,

Versus

WILLIAM M. WINDSOR,
Defendant-Appellant

JUDGE ORINDA D. EVANS,
Movant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

---

BEFORE: CARNES, BARKETT and HULL, Circuit Judges.

BY THE COURT:

Now pending before the Court are numerous motions filed both by Appellant and by Appellees Maid of the Mist, et al. ("Maid"). Included in those motions are Appellant's "Emergency Motion to Disqualify Eleventh Circuit Judges and Motion to Change Venue" and Maid's Motion for Sanctions for Filing a of this Court and for transfer to another venue.

It is plain from review of Appellant's motion, as well as this history of this appeal and the previous cases filed by Appellant in this Court, that he seeks to disqualify the members of this Court based on his belief that previous adverse rulings were the result of bias, dishonesty or some other improper motivation or intent, up to and including relationships with Judges Evans and Duffey of the Northern District of Georgia.

However, as the Supreme Court stated in Liteky v. U.S., 510 U.S. 540 555,114 S.Ct. 1147, 1157 (1994), "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." see also Byrne v. Nezhat, 261 F.3d 1075, 1103 (11th Cir. 2001); McWhorter v. City of Birmingham, 906 F .2d 674, 678 (11th Cir. 1990). Appellant's motion to disqualify and the other motions filed by Appellant fail to allege any valid basis for disqualification. Consequently, Appellant's motion to disqualify this Court is without merit and is DENIED

In reviewing the motions filed with the Court, we have also reviewed Appellant's brief, which fails to meaningfully challenge the orders on appeal. Consequently, we sua sponte DISMISS this appeal AS FRIVOLOUS AS BRIEFED. See 11th Cir. R. 42-4.

With the exception of Maid's Motion for Sanctions for Filing a Frivolous Appeal, all remaining motions are DENIED AS MOOT.

We now turn to Maid's Motion for Sanctions for Filing a Frivolous Appeal. Although this motion initially cites to 11th Cir. Rule 27-4 (sanctions for filing a

frivolous motion), the motion later cites to Fed.R.App.P. 38 and was filed contemporaneously with Maid's brief as required by Rule 38. We therefore consider this motion filed pursuant to Rule 38 and analyze it under that rule. We take into consideration the fact that, despite Appellant's prolific filings, Appellant is a pro se litigant.

Rule 38 provides that: "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." "The purpose of Rule 38 damages is to compensate appellees who are forced to defend judgments awarded them in the trial court from appeals that are wholly without merit, and to 'preserve the appellate court calendar for cases worthy of consideration.' ... Another important purpose is to discourage litigants from unnecessarily wasting their opponents' time and resources." See Nagle v. Alspach, 8 Fad 141, 145 (3rd Cir. 1993).

We have imposed Rule 38 sanctions upon "appellants who raise 'clearly frivolous claims' in the face of established law and clear facts." See Farese v. Scherer, 342 F.3d 1223, 1232 (11th Cir. 2003) citing Misabec Mercantile, Inc. De Panama v. Donaldson, Lufkin & Jenrette ACLI Futures, Inc., 853 F.2d 834, 841 (11th Cir. 1988).

After review of the matters pending before us, we readily conclude that Appellant's conduct in this Court meets the requirement for imposition of Rule 38 sanctions. Therefore, Maid's Rule 38 motion is GRANTED.

Maid is DIRECTED to file a statement of costs and expenses within twenty-one (21) days of the date of this Order. Appellant's response to Maid's statement will be due within fourteen (14) days of service of Maid's statement.

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 25 2010

THOMAS K. KAHN
CLERK

APPEAL DOC.NO. 09-14735-D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC.,
Defendants; and WILLIAM M. WINDSOR, Appellant
and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Case No. 1:09-CV-01543-WSD
Judge William S. Duffey, Jr.

BRIEF OF DEFENDANT/APPELLANT WILLIAM M. WINDSOR

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PRO SE FOR DEFENDANT/APPELLANT,

CERTIFICATE OF INTERESTED PERSONS

William M. Windsor, Pro Se, hereby certifies pursuant to FRAP 26.1 and 11th Cir. Rule 26.1-1 that the following persons, judges, associations of person, firms, partnerships, or corporations may have an interest in the outcome of this case:

1) Alcatraz Media, Inc., and Alcatraz Media, LLC, Defendants (jointly "Alcatraz")
2) Anderson, Judge R. Lanier, United States Appellate Judge.
3) Anderson, Jr., Carl Hugo ("Mr. Anderson"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
4) Barkett, Judge Rosemary, United States Appellate Judge.
5) Batten, Timothy C., United States District Judge.
6) Berry, Judith L. ("Berry"), customer of Alcatraz and Maid.
7) Birch, Judge Stanley F., United States Appellate Judge.
8) Black, Judge Susan H., United States Appellate judge.
9) Blackburn, Judge, United States District Judge.
10) Bright, Sarah Louise ("Ms. Bright"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
11) Brown, Marc W. ("Mr. Brown"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.

12) Carlson, Sandra ("Carlson"), Assistant Controller of Maid.
13) Camp, Jack T., United States District Judge.
14) Carnes, Judge Ed, United States Appellate Judge.
15) Carnes, Judge, United States District Judge.
16) Chambliss, Senator Saxby.
17) Conway, Judge, United States District Judge.
18) Cooper, Clarence, United States District Judge.
19) Cox, Judge Emmett Ripley, United States Appellate Judge.
20) Dubina, Judge Joel F., United States Appellate Judge.
21) Duffey, Hon. William S. ("Judge Duffey"), United States District Judge.
22) Edmondson, Judge J.L., United States Appellate Judge.
23) Evans, Hon. Orinda D. ("Judge Evans" or the "DC"), United States District Judge.
24) Everybody Loves Travel, LLC, company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
25) Fay, Judge Peter T., United States Appellate Judge.
26) Federal Bureau of Investigation ("FBI").
27) Forrester, J. Owen, United States District Judge.
28) Fuller, Judge, United States District Judge.
29) Georgia Athletic and Entertainment Commission ("GAEC").
30) Glynn, Christopher ("Glynn"), President of Maid.

31) Godbold, Judge John C., United States Appellate Judge.
32) Granade, Judge, United States District Judge.
33) Hawkins & Parnell ("H&P"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
34) Hill, Judge James C., United States Appellate Judge.
35) Hull, Judge Frank M., United States Appellate Judge.
36) Huber, Christopher J, United States Attorney.
37) Hunt, Willis B., Jr., United States District Judge.
38) Judicial Council of the Eleventh Circuit.
39) Kravitch, Judge Phyllis A., United States Appellate Judge.
40) Maid of the Mist Corporation ("Corporation"), Appellee, and Maid of the Mist Steamboat Company, Ltd. ("Steamboat"), Appellee, (jointly "Maid").
41) Marcus, Judge Stanley, United States Appellate Judge.
42) Martin, Beverly B., United States District Judge.
43) Mendell, Brett A. ("Mr. Mendell"), Former Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
44) Mickle, Judge, United States District Judge.
45) Moore, Judge, United States District Judge.
46) Moye, Charles A., United States District Judge.

47) Murphy, Harold., United States District Judge.
48) National Association of Ticket Brokers.
49) New York State Bar Association.
50) New York State Office of Parks, Recreation and Historic Preservation
51) New York State Comptroller's Office
52) Niagara County New York District Attorney.
53) Niagara Parks Commission
54) O'Kelley, William C., United States District Judge.
55) Pannell, Charles A., United States District Judge.
56) Penland, James W. ("Mr. Penland"), Former Counsel for William M. Windsor, Appellant.
57) Phillips Lytle ("Phillips"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
58) Pryor, Judge William H., United States Appellate Judge.
59) Quillian Yates, Sally, Acting Unites States Attorney.
60) Raley, G. Brian ("Mr. Raley"), Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
61) Reserve 123, Inc., a company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
62) Reserve XL, Inc., a company owned by the owners of Defendants, Alcatraz Media, Inc., and Alcatraz Media LLC.
63) Round America, LLC, a company owned by William M. Windsor.

64) Royal, Judge, United States District Judge.
65) Ruddy, Timothy P. ("Ruddy"), Vice-President of Maid.
66) Russ, Arthur ("Mr. Russ"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
67) Schul, Robert J. ("Schul"), Controller of Maid.
68) Shoob, Marvin H., United States District Judge.
69) State Bar of Georgia.
70) Story, Richard W., United States District Judge.
71) Sullivan, Kathleen E. ("Ms. Sullivan"), Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
72) Take 5 Tours, Inc., a company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
73) Thrash, Thomas W., United States District Judge.
74) Tidwell, G. Ernest, United States District Judge.
75) Tjoflat, Judge Gerald Bard, United States Appellate Judge.
76) United States Attorney General.
77) United States Attorney's Office.
78) United States Supreme Court.
79) Vining, Robert L, Jr., United States District Judge.
80) Ward, Horace T., United States District Judge.
81) Wilson, Judge Charles R., United States Appellate Judge.

82) Windsor, William M. ("Windsor or Appellant"), Defendant and Appellant. (Defendants Alcatraz and Windsor are reflected herein as "A&W.")
83) ZZ Tours, Inc., a company owned by William M. Windsor.

No corporate disclosure statement is necessary for this party because Windsor is a natural, human, person.

Respectfully submitted this 2nd day of November, 2009.

William M. Windsor:

/s/_____
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STATEMENT REGARDING ORAL ARGUMENT

Appellant Windsor requests oral argument. This case is heavily fact dependent in a record that contains thousands of false statements. Windsor believes that oral argument will aid the court by providing a more in-depth explanation of the facts and will give the court the opportunity to question Windsor about facts and issues to aid the court in making a more informed decision.

Windsor is pro se, and Windsor believes the oral argument will assist the court in any areas where Windsor was at a disadvantage as a pro se party in the preparation of the written appeal.

Windsor also believes that the Eleventh Circuit discriminates against pro se parties. An oral argument might reduce the opportunity for this Court to discriminate.

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I. STATEMENT OF JURISDICTION

District Court Jurisdiction:

Jurisdiction for the District Court's subject matter is diversity among the parties pursuant to 28 U.S.C.A.§1332.

Court of Appeals Jurisdiction:

The United States Court of Appeals for the Eleventh Circuit has jurisdiction of this case pursuant to 28 U.S.C.A.§1291 because this is an appeal of final decisions of the United States District Court for the Northern District of Georgia, a district court within the Eleventh Judicial Circuit.

Filing Dates Establishing the Timeliness of the Appeal:

The Order Staying the Case ("Stay Order") was entered on June 8, 2009. [R.4.] (Depo-Doc.4.)

The "Order Granting Motion to Quash and Motion to Supplement" ("Quash Order") was entered June 30, 2009. [R.32.] (Depo-Doc.32.)

The Motion for Reconsideration ("MFR") was filed on July 10, 2009. [R.34.] (Depo-Doc.34.)

The Motion for Change of Venue ("MCV") was filed on July 10, 2009. [Depo-Doc.36.)

The "Order Denying Motion for Reconsideration and Motion for Change of Venue" ("Reconsideration Order") was entered September 3, 2009. [R.42.] (Depo-Doc.42.)

On September 15, 2009, the appeal fee was paid. (Depo-Doc.44.)

The Appeal was docketed on September 21, 2009. [R.DS1.] [DS1.]

FRAP Rule 31(a)(1) provides that the appellant must serve and file a brief within 40 days after the record is filed. The record was filed on October 14, 2009, so based upon FRAP, the Brief is due by November 23, 2009. (Depo-Doc.47.) However, on September 22, 2009, the U.S.C.A. issued a notice to Windsor stating that Appellant's Brief was to be filed within 40 days from September 21, 2009. This set a deadline of November 1, a Sunday, so the Brief may be due on Monday, November 2, 2009. (Depo-Doc.48.)

This civil action is shown as a "closed case" by the District Court. [R.DS1.] [DS1.]

Assertion that the Appeal is from an Appealable Order that establishes the Court of Appeals' Jurisdiction:

The Order Granting the Motion to Quash ("Quash Order") was filed on June 30, 2009. [R.32.] (Depo-Doc.32.) The Motion for Reconsideration ("MFR") was filed on July 10, 2009 (Depo-Doc.34.) The Reconsideration Order ("Reconsideration Order") [R.42.] (Depo-Doc.42) was entered on September 3, 2009. These orders are final and appealable. The Reconsideration Order is a reconsideration of the Quash Order. These address the same subject, so this is an appeal of both orders.

II. STATEMENT OF THE ISSUES

This is an appeal from an order dated September 3, 2009 ("Reconsideration Order") and the underlying order dated June 30, 2009 ("Quash Order") that led to this appeal. These orders are jointly referred to as the "Appealed Orders." The issues of error before the Court of Appeals are as follows:

Whether Judge Duffey erred by allowing Judge Evans to file a Motion to Quash Subpoena and create this civil action.

Whether Judge Duffey erred by demonstrating pervasive bias against Windsor.

Whether Judge Duffey erred by making false statements in orders.

Whether Judge Duffey erred by encouraging perjury, subornation of perjury, Rule 11 violations, obstruction of justice, dishonest Plaintiffs, dishonest Plaintiffs' Attorneys, and dishonest Judge Evans.

Whether Judge Duffey erred by making fact decisions contrary to the facts that were before the court.

Whether Judge Duffey erred by commiting perjury.

Whether Judge Duffey erred by issuing orders without legal justification.

Whether Judge Duffey erred by claiming Windsor did not cite errors of law that would justify reconsideration on the Court's orders.

Whether Judge Duffey erred by claiming Windsor did not cite errors of fact that would justify reconsideration on the Court's orders.

Whether Judge Duffey erred by violating Windsor's Constitutional rights.

Whether Judge Duffey erred by failing to report Judge Evans to the appropriate authorities for violations of the Code of Judicial Conduct.

Whether Judge Duffey erred by failing to report Plaintiffs' Attorneys to the appropriate authorities for violations of the State Bar of Georgia Rules of Professional Conduct.

Whether Judge Duffey erred by failing to provide valid legal justification when denying Motion for Change of Venue.

III. STATEMENT OF THE CASE

This is an appeal from orders of the United States District Court, Northern District of Georgia, Case Number 1:09-CV-01543-WSD: Order entered September 3, 2009 [R.42.] (Depo-Doc.42) ("Reconsideration Order"), and Order entered June 30, 2009 ("Quash Order") [R.32.] (Depo-Doc.32.). Jointly referenced as the "Appealed Orders," these orders contain rulings on quashing a deposition and denying a change of venue.

A. Statement of the Proceedings Below

On August 29, 2005, Maid initiated civil action 1:06_CV-0714-ODE ("MIST-1") in the Superior Court of Gwinnett County, Georgia, by filing a Verified Complaint seeking injunctive relief. It was verified by Glynn. [R.1.] (Doc.1.) [2]

On October 12, 2005, A&W filed a Verified Answer and told the truth; Alcatraz filed a counterclaim. Windsor signed the Verified Answer swearing that virtually everything in the Verified

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[2] Throughout this Brief, the Record Excerpts are referenced as "R.#." Please note that there are two records. Two Docket Sheets are provided (DS1 and DS2). Citations to the record in 1:09-CV-01543-WSD (DS1) are cited as "Depo-Doc." Citations to the record in 1:06-CV-0714-ODE (DS2) are cited as "(Doc.#-Pg.#.)" "Dec#" is used to refer to the numbered declarations of William M. Windsor. Interested persons are defined on pages i to iv.

Complaint was false. [R.3.] (Doc.3;Doc.315:Exh.A Pg.23-¶48-49.) Windsor compiled the proof that the Verified Complaint was false using the testimony of the Plaintiffs' witnesses. (Doc.377;Doc.462.)

On March 20, 2006, Maid filed an "Updated Brief in Support of Motion for Temporary Restraining Order" alleging that A&W were improperly selling Maid vouchers. (Doc.6-Pg.1.) Maid claimed that A&W had violated the Lanham Act. (Doc.6-Pg.6.) A&W removed the action to the U.S. District Court. (Doc.1-Pg.1.)

On March 28, 2006, A&W filed a Response to Motion for TRO. Windsor told the truth under oath, swearing that Maid's claims were false. (Doc.4.) Windsor compiled the proof that the Motion was false using the testimony of the Plaintiffs' witnesses. (Doc.377;Doc.462.)

On March 29, 2006, the case was assigned to Judge Evans. (Doc.8.)

On March 30, 2006, Judge Evans established the erroneous position that what Glynn of Maid said was true and what Windsor said was false. The TRO was issued. [R.10.] (Doc.10.) (Doc.361-Dec#2:Pg.25-¶81;Doc.381-Dec#7:P25-¶39; Doc.315;Doc.462.)

On March 30, 2006, A&W filed a motion with justification for a $400,000 bond. (Doc.11.) Judge Evans ordered only $5,000. (Doc.10.) This demonstrated bias. (Doc.462.)

On April 11 and 12, 2006, Judge Evans held the only evidentiary hearing in this case on Maid's request for a preliminary injunction. (Doc.35; Doc.36; Doc.37.) At the conclusion of the evidence, Judge Evans informed Maid that they had seven days to identify a cause of action. (Doc.36-Pgs.166-167.)

On April 19, 2006, Maid filed a Proposed Order Granting Preliminary Injunction. This identified claims of tortious interference and false advertising as the legal arguments for the hearing a week before. (Doc.27-Pg.1.)

On May 12, 2006, Judge Evans granted a preliminary injunction ("PI") based upon Maid's new tortious interference claim. Judge Evans maintained her position that what Glynn said was true and what Windsor said was false. Judge Evans made many false statements in the PI Order. [R.33.] (Doc.33-Pg.1.) Windsor compiled the proof that the PI Order was false using the testimony of the Plaintiffs' witnesses. [R.377.] (Doc.377-Exh.9; Doc.462.)

On January 22, 2007, A&W moved for summary judgment ("SJ") on Maid's tortious interference claim, and Maid moved for SJ on tortious interference, attorney fees under O.C.G.A.§13-6-11, and all Alcatraz counterclaims. (Doc.146;Doc.148.)

On February 2, 2007, Windsor brought the hundreds of lies, perjury, and Rule 11 violations of Maid to the attention of Judge Evans, but she cut him off in mid-sentence and ignored it. [R.174.] (Doc.174-Pgs.34,45-47,23-28.)

On August 9, 2007, Judge Evans granted Maid's motion for summary judgment ("SJ Order") and denied Alcatraz's motion. Judge Evans made as many as 200 false statements in the SJ Order. [R.251.] (Doc.251.) Windsor compiled the proof that the SJ Order was false using the testimony of the Plaintiffs' witnesses. (Doc.377_Exh.22;Doc.462.)

On September 7, 2007, Alcatraz appealed the SJ Order (Appeal_No._07-14214-BB).

On September 10, 2007, Windsor appealed the SJ Order. (Appeal_No._07-14235-BB). (Doc.254;Doc.256.)

On October 21, 2008, the U.S.C.A. vacated and remanded the SJ Order in part. (Doc.344.)

On October 29, 2008, an order was entered making the USCA mandate the judgment of the DC. (Doc.346.)

On December 9, 2008, Judge Evans entered by consent a "Final Order and Judgment." (Doc.354.) A&W did not provide any releases; the only promise was to not appeal the summary judgment to the Supreme Court. (Doc.354-Pg.4.)

On April 24, 2009, Windsor began efforts to get the case reopened and to get Judge Evans recused:

> April 24, 2009 -- Motion to Recuse Judge Evans. [R.361.] (Doc.361.)
>
> April 24, 2009 -- Motion to Reopen Case. (Doc.362.)
>
> April 27, 2009 -- Motion for Sanctions. (Doc.363.)
>
> April 27, 2009 -- Motion for Sanctions. (Doc.364.)
>
> May 13, 2009 -- Motion for Discovery. (Doc.374.)

May 13, 2009 -- Amended Dec #3 [R.377.] (Doc.377.)

May 20, 2009 – Reply to Response to Motion to Recuse. (Doc.381.)

May 22, 2009 – Reply to Response to Motion to Reopen. (Doc. 385.)

On May 22, 2009, Windsor filed Notice to Take Deposition of Judge Evans. (Doc.389.)

On May 22, 2009, Judge Evans entered an order denying several of Windsor's motions. (Doc.390.)

On June 3, 2009, Judge Evans filed an Emergency Motion to Quash Subpoena. [Depo-Doc.1.)

On June 8, 2009, Judge Duffey issued an Order Staying Case. [R.4.] (Depo-Doc.4.)

On June 10, 2009, Judge Evans filed a Motion to Supplement Emergency Motion to Quash Subpoena. (Depo-Doc.8.)

On June 18, 2009, Windsor filed a Motion for Reconsideration or Revision of Order Staying Case. [Depo-Doc.15.]

On June 22, 2009, Windsor filed a response to Emergency Motion to Quash Subpoena. [Depo.Doc.21.)

On June 22, 2009, Windsor filed a response to Motion to Supplement Emergency Motion to Quash Subpoena. [Depo.Doc.24.)

On June 30, 2009, Judge Duffey issued the Order Granting Motion to Quash [R.32.] (Depo-Doc.32.)

On July 10, 2009, Windsor filed a Motion for Reconsideration. (Depo-Doc.34.)

On June 4, 2009, Windsor filed the Second Motion to Recuse Judge Evans and Dec #23. [R.406.] (Doc.406.)

On July 15, 2009, Windsor filed the Twenty-Fifth Declaration of William M. Windsor to provide a complete timeline of virtually everything that has happened in this case. (Doc.462-Dec#25_and Exhs.717-3153; Doc.362_and_Exhibits.)

On July 18, 2009, Windsor filed the Third Motion to Recuse Judge Evans and Dec #50. (R.470.] (Doc.470.)

On July 16, 2009, Windsor filed a Verified Complaint of Professional Misconduct against

Maid's Attorneys and Judge Evans pursuant to LR83.1C-NDGa. [R.474.] (Doc.474.)

On July 22, 2009, Judge Evans filed a Response to Motion for Reconsideration and Response to Motion for Change of Venue. (Depo-Doc.38-39.)

On September 3, 2009, Judge Duffey issued an Order denying Motion for Reconsideration and Motion to Change Venue. [R.42.] (Depo-Doc.42.)

On September 15, 2009, Windsor filed a Notice of Appeal. (Depo-Doc. 44.)

On October 14, 2009, Windsor filed a Petition for Writ of Mandamus to Disqualify Judge Evans. [R.Writ.]

A. Statement of the Facts

This civil action ("Depo Action") was created by Judge Evans when she filed a Motion to Quash a subpoena for her deposition in a civil action in which she is the presiding judge. (Doc.389.)

The underlying action (1:06-CV-0714-ODE) is about Judge Evans, several attorneys, and five people who lied again and again and again to improperly cost A&W approximately one million dollars in legal fees and litigation expenses and

much more. (Doc.364.-Dec#12:¶¶12007-12014.)

Maid's managers have committed hundreds of counts of perjury and have conspired to commit fraud upon the courts. (Doc.362-Dec#1:¶1; Doc.385: Dec#6:¶9;Doc.364-Dec#12: ¶12007; Doc.377-Amended_Dec#3,Exhs.1-28.) 46 of the 50 paragraphs in the Verified Complaint were false or incorrect and/or not based upon the personal knowledge of Glynn. (Doc.377-Amended_Dec#3-Exh.1:Pgs.1-158.)

The lies, false sworn pleadings, false pleadings, and discovery abuse continued throughout MIST-1. This deprived A&W of a fair trial. (Doc.363;Doc.364-Dec#12;Doc.377-Exh.23; Doc.361-Exh.16.) The dishonesty of Maid and Maid's attorneys was compounded by the bias and improper and illegal acts of Judge Evans, who withheld documents from A&W, violated the rights of A&W by denying the most basic discovery, and acted without the impartiality required of a judge. (Doc.381; Doc.377-Amended_Dec#3:Exhs.9,22.)

Windsor has documented everything. (Doc.377;Doc.378;Doc462.) Evidence before the court consists of the entire docket in MIST-1, especially Docs. 361-362-363-364-368-374-377-378-381-383-385-462-474. [R.DS2.]

On May 12, 2006, Judge Evans signed an

Order Granting Preliminary Injunction (the "PI Order"). (Doc.33.) The PI Order misstated the findings that could be made based upon the evidence presented, misstated the standard under which the matter was considered, attempted to effectuate a consolidation of the hearing on a request for preliminary injunctive relief with a trial on the merits, sought to dispose of claims not even presented, and relied upon after-the-motion/hearing-asserted claims. [R.377.] (Doc.377-Amended_Dec#3-Exh.9:Pg.1)

The PI Order contains as many as 39 false statements. Windsor has documented that as many as 17 of these statements are proven false by the testimony of Maid's managers. [R.377.] (Doc.377-Amended_Dec#3-Exh.9:Pgs.1-81.) Judge Evans had the evidence before her, so she was obligated to know the facts. Judge Evans was subsequently advised by A&W that sworn affidavits from customers proved that the alleged damages to justify the injunction had been proven to be false, but Judge Evans did nothing. [R.174.](Doc.174:Pg.31.)

On August 8, 2007, Judge Evans signed a Summary Judgment Order ("SJ Order"). (Doc.251.) Windsor has documented that as many as 210 of the 416 statements by Judge Evans are false or incorrect or are conclusions based on false statements. [R.377.] (Doc.377-Amended_Dec#3-Exh.22:Pgs.1-184.)

Judge Evans claimed in the SJ Order that she rejected the statements of fact presented by the parties, so she drafted the facts based on the evidence. [R.251.] (Doc.251:Pg.3.) Judge Evans invented facts and made statements that are proven to be false by the evidence. [R.377.] (Doc.377-Amended_Dec#3,Exh.22)

Windsor has charged Judge Evans with perjury, obstruction of justice, RICO, fraud upon the court, and more.

The facts relevant to the District Court's consideration of the Motion to Quash were set out in Depo-Doc.34_P.3-7_¶16-30; Depo-Doc.21; Depo-Doc.24. A comprehensive statement of facts in Civil Action No. 1:06-CV-0714-ODE has been set out in the sworn Twenty-Fifth Declaration of William M. Windsor ("Dec #25" – Doc.462). It is a horror story of abuse and violations of the law by the Plaintiffs, Plaintiffs' Attorneys, and Judge Orinda D. Evans. [Depo-Doc.21_Dec #35 ¶30.]

Maid has not filed a single affidavit in 2009, so Windsor's declarations are uncontroverted and provide the only facts for this Court to consider.

IV. SUMMARY OF ARGUMENT

Appellant Windsor asserts that the Appealed Orders constitute error summarized as follows:

Windsor seeks reversal of the Appealed Orders. Judge Duffey issued the order denying Windsor's Motion for Reconsideration of Order to Quash Deposition ("MFR"), and denying Windsor's Motion for Change of Venue ("MCV") after initially issuing an Order to Quash the Deposition. [R.42.] (Doc.42.) [R.32.] (Doc.32)

Judge Duffey erred by allowing Judge Evans to file a Motion to Quash Subpoena and create this civil action. Neither Judge Evans nor Judge Duffey cited any legal authority for the creation of civil action 1:09-CV-01543-WSD or to have a sitting judge file a Motion to Quash her own subpoena issued by the District Court Clerk.

Judge Duffey erred by demonstrating pervasive bias against Windsor. The denial of these motions was because of the bias, not based upon the merits or law.

Judge Duffey erred by making false statements in orders.

Judge Duffey erred by encouraging perjury, subornation of perjury, Rule 11 violations, obstruction of justice, dishonest Plaintiffs, dishonest Plaintiffs' Attorneys, and dishonest Judge Evans. Judge Duffey and federal judges in Atlanta, Georgia improperly encourage these actions.

Judge Duffey erred by making fact decisions contrary to the facts that were before the court. There is no factual support for the Appealed Orders. Judge Evans did not file a single affidavit. [R.DS1.]

Judge Duffey erred by commiting perjury. Judge Duffey and federal judges in Atlanta, Georgia improperly make false statements in orders to damage litigants. The Appealed Orders contain false statements.

Judge Duffey erred by issuing orders without legal justification.

Judge Duffey erred by claiming Windsor did not cite errors of law that would justify reconsideration on the Court's orders.

Judge Duffey erred by claiming Windsor did not cite errors of fact that would justify reconsideration on the Court's orders.

Judge Duffey erred by violating Windsor's Constitutional rights by violating the Constitution and the Code of Judicial Conduct.

Judge Duffey erred by failing to report Judge Evans to the appropriate authorities for violations of the Code of Judicial Conduct.

Judge Duffey erred by failing to report Plaintiffs' Attorneys to the appropriate authorities for violations of the State Bar of Georgia Rules of Professional Conduct.

Judge Duffey erred by failing to provide valid legal justification when denying Motion for Change of Venue.

STANDARD OF REVIEW

Windsor ask this Court to consider that the standard of review should be plain error. The errors in this case are so fundamental that, absent the errors, an unbiased judge would have reached a different result.

A district court's denial of a motion for reconsideration is reviewed for an abuse of discretion. (***Corwin v. Walt Dinsey Co***., 475 F.3d 1239, 1254 (11th Cir. 2007).)

Since plain error has permeated the entire proceedings due to Judge Duffey's bias, Judge Evans' bias, and the dishonesty of Maid and Maid's attorneys, Windsor respectfully proposes that this Court elect to conduct a de novo review of the entire record under both its review and supervisory powers.

Plain-error review involves four prongs. (***United States* v. *Olano***, 507 U. S. 725, 732–736 (1993).) Windsor meets the requirements.

Errors have been made of such a nature that to leave them uncorrected would result in damage to the integrity, reputation, and fairness of the judicial process.

V. ARGUMENT AND CITATIONS OF AUTHORITY

The legal system was structured so that grave miscarriages of justice, such as the one in this case, should not happen. Unfortunately, the legal system and its protections do not exist in the federal courts in Atlanta, Georgia. Federal judges in Atlanta routinely violate the law and the rights of litigants for their own misguided purposes.

Oaths theoretically require honesty. The federal judges in Atlanta ignore their oaths and the oaths of others.

The system theoretically provides safeguards and checks and balances such as Rules 11, 34, 37, Local Rule 83.1C, Rule 60, 28 U.S.C. 144 and 455 that provide means to call party, attorney, and judicial dishonesty to the attention of judges. The federal judges in Atlanta ignore these rules and laws as they abuse the rights of litigants for their own improper purposes.

The worst of hardships has resulted from the dishonesty in this case. A&W have lost approximately $1,000,000.00, have been saddled with an injunction that is a violation of Georgia law, have been defamed, and have lost years of man hours fighting the injustice. Now others are unfairly using the erroneous decision in this case in litigation

against Alcatraz in efforts to "void" O.C.G.A.43-4B. To Alcatraz, the financial cost represents years of pre-tax profits. To Windsor, the financial cost represents money that this retiree expected to live on in retirement.

None of this should have happened. The hardship has been extreme, unexpected, unfair, and illegal. And it continues.

Maid and Maid's Attorneys deliberately planned and carefully executed an unconscionable scheme to obtain judgments and injunctions against A&W, to force A&W to incur significant legal expenses and to obtain money from A&W. (Doc.377-Amended_Dec#3:Exh.23; Doc.363; Doc.364-Dec#12.)

Amended_Dec#3 and the exhibits thereto provide proof of the massive dishonesty and bad faith. [R.377.] (Doc.377-Amended_Dec#3:Exhs.1-28;also-Doc.378-Dec#5;Doc.462.)

When Judge Evans created this action to cause Judge Duffey to enter the picture, Windsor felt he would finally get someone to look at the facts. Sadly, Judge Duffey has quickly proven to be as dishonest as Judge Evans.

There is no basis for the orders that Judge Duffey issued in this matter. His orders are filled

with lies. The ONLY facts before Judge Duffey were those provided by Windsor, yet Judge Duffey managed to invent his own facts so he could rule against Windsor. There was no legal basis for Judge Duffey's orders, so he just lied again and again to protect his next-door neighbor, Judge Evans. Judge Duffey and Judge Evans are part of the corruption that is rampant in the federal court system in Atlanta, Georgia.

What has happened in this civil action and in the underlying action is quite simple. Judge Evans showed pervasive bias, ignored the facts and the law, and has done everything that she could to cheat the Defendants. Windsor has proven massive dishonesty and wrongdoing by the Plaintiffs, their attorneys, and Judge Evans. Judge Evans is now trying to cover up her criminal actions, and her friend, Judge Duffey, has come to her rescue by issuing the Appealed Orders without factual or legal support. Judge Duffey is committing perjury and obstruction of justice, and he is relying on the corruption in the Eleventh Circuit to cover him and his next-door neighbor, Judge Evans. Judges of the Eleventh Circuit have proven their own dishonesty and corruption again and again in these actions. (See the Appeals in 1:06-CV-0714-ODE, 1:09-CV-01543-WSD, 1:09-CV-02027-WSD, and the Complaint of Judicial Misconduct and Judicial Review Petition filed by Windsor against Judge Evans with the Judicial Council of the Eleventh

Circuit.)

Windsor comes now to appeal the corrupt actions of Judge Evans and Judge Duffey to a corrupt group of Eleventh Circuit judges. Windsor is filing a motion to disqualify all Eleventh Circuit and Northern District of Georgia judges because Windsor is convinced that he will never receive a fair hearing.

Honest judges will reverse and remand the orders of Judge Duffey if the decision is based on the motions filed, the case law cited, fundamental legal rights and obligations, and what the law should be. [Depo-Doc.21_ P1-2;Dec #35_¶11-15.]

A. JUDGE DUFFEY ERRED BY ALLOWING JUDGE EVANS TO FILE A MOTION TO QUASH SUBPOENA AND TO CREATE THIS CIVIL ACTION.

Neither Judge Evans nor Judge Duffey cited any legal authority for this civil action, the motion by Judge Evans, or the orders by Judge Duffey. Windsor cannot find any rule in the FRCP or any case law to provide a legal basis for a judge to file a motion to quash in a civil action in which she is presiding and has been accused of misconduct.

The subpoena for Judge Evans' deposition was provided and signed by the District Court Clerk

in response to a letter from Windsor explaining the need. Judges have no power to file motions in their own court. Judges have no power to cause a civil action to be created without first filing a civil action. This "civil action" simply appeared without explanation. [R.DS1.] [Depo-Doc.1.]

B. JUDGE DUFFEY ERRED BY DEMONSTRATING PERVASIVE BIAS AGAINST WINDSOR.

Judge Duffey does not have a fair or impartial bone in his body when it comes to his friend, next-door neighbor, and former supervisor, Judge Evans.

Judge Duffey's initial involvement in this matter was to enter an order that made statements that improperly favored the position of Judge Evans. [Depo-Doc.15._Dec #29 ¶ 29001.]

The Stay Order says: "The subpoena, served by William M. Windsor, seeks Judge Evans' testimony regarding her mental processes and bases for her decisions in the closed case...." This language is totally inappropriate. [Depo-Doc.15._Dec #29 ¶ 29004.] There was no such evidence before the Court. [Depo-Doc.15._Dec #29 ¶ 29005.]

The "closed case" language in the Stay Order is also inappropriate. The declarations and motions

before the Court and in 1:06-cv-0714-ODE indicate that MIST-1 is not a "closed case." [Depo-Doc.15. Dec #29 ¶ 29010.]

> "It follows that the statute grants a similar right during subsequent phases of the litigation, when a judge has already decided, or is in the process of deciding, the most significant issues presented in a case. We therefore construe section 455(a)'s 'proceeding" requirement to embrace only such activity following the initiation of an action by a private party or governmental agency designed ultimately to modify or affect the substantive rights of a litigant.'" (***U.S. v. Sciarra***, 851 F.2d 621, 635 (11th Cir. 1988).)

The language in the Stay Order regarding the service of the subpoena was also inaccurate. The Stay Order says: "Windsor attempted to serve a deposition subpoena on Judge Evans in her chambers...." This, too, is incorrect information improperly claimed by Mr. Huber. [Depo-Doc.15. Dec #29 ¶ 29023.] The Second Declaration of Michelle Thornton ("Ms. Thornton") attached to Depo-Doc.15 as Exhibit D explains that she determined the polite way to deliver the subpoena to the receptionist after consulting with the U.S. Marshal Service. Ms. Thornton did not go

near the chambers of Judge Evans. (Exhibit D to Depo-Doc.15.) [Depo-Doc.15. Dec #29 ¶ 29024.]

The pervasive bias continued. Judge Duffey's next act of bias was to declare Windsor "scurrilous and irresponsible" based SOLELY on Windsor's testimony. [R.32.] (Depo-Doc.32.) Windsor does not believe there can be any better proof of extrajudicial bias than having Judge Duffey make such a statement when he had no facts before him to indicate anything negative about Windsor. Neither the Plaintiffs' Attorneys nor Judge Evans have filed any affidavits in 2009. [R.DS1.] [R.DS2.] So, Judge Duffey decided Windsor was "scurrilous and irresponsible" because he charged Judge Evans with misconduct and criminal violations. This is bias against Windsor and prejudice for federal judges. This is extrajudicial bias, and it has been pervasive.

C. JUDGE DUFFEY ERRED BY MAKING FALSE STATEMENTS IN ORDERS.

Judge Duffey's Reconsideration Order falsely says:

"Windsor also has not demonstrated that there is any need to correct a clear error of law or fact. In fact, Windsor does not cite any cases or statutes to support his conclusory

> allegations. Windsor simply rehashes the arguments he made both before Judge Evans and this Court. He cites to over a dozen of his declarations and other filings as "legal support" for his motion for reconsideration. A review of these documents reveals that they simply express Windsor's disagreement with Judge Evans' rulings (which were affirmed on appeal) and the Court's June 30 Order. This disagreement is not an appropriate ground for reconsideration."

Judge Duffey's claims are false and dishonest.

Windsor compared his Response to the Motion to Quash and his Motion for Reconsideration to prove this false statement by Judge Duffey. [Depo-Docs.21,24,34.] There were 117 paragraphs in the Response to Emergency Motion to Quash Subpoena [Depo-Doc.21], 55 paragraphs in the Response to Motion to Supplement Emergency Motion to Quash Subpoena [Depo-Doc.24], and 36 paragraphs in the Motion for Reconsideration [Depo-Doc.34]. The 36 paragraphs constitute just 21% of what was in the prior responses. Of the 36, 23 paragraphs are new; eight (8) paragraphs are responses to issues raised by the orders that required some previous information to be repeated and emphasized (two of the eight paragraphs summarized what had been expressed in

46 paragraphs in the responses); three (3) paragraphs were repeated; and two (2) paragraphs were changed slightly to update them. If Windsor admits that five pages are essentially repeated, this means only 3% of the Motion for Reconsideration could be even remotely characterized as a "rehash," and after all, it is a motion to reconsider what had been previously discussed. Only two (2) paragraphs (paragraphs 2 and 23) repeat arguments presented to Judge Evans.

Windsor has therefore proven that Judge Duffey's statement that Windsor "simply rehashes the arguments he made both before Judge Evans and this Court" is false and dishonest. Windsor finds this typical of the dishonesty of the federal judges in Atlanta, Georgia. Federal judges in Atlanta routinely make false statements to avoid dealing with the facts and the law to accomplish their own improper purposes.

D. JUDGE DUFFEY ERRED BY ENCOURAGING PERJURY, SUBORNATION OF PERJURY, RULE 11 VIOLATIONS, OBSTRUCTION OF JUSTICE, DISHONEST PARTIES, DISHONEST ATTORNEYS, AND DISHONEST JUDGES.

Judge Duffey ignored Windsor's uncontroverted proof of massive dishonesty in MIST-1.

Judge William S. Duffey, Judge Orinda D. Evans, Judge R. Lanier Anderson. Judge Rosemary Barkett, Judge Stanley F. Birch, Judge Susan H. Black, Judge Blackburn, Judge Ed Carnes, Judge Conway, Judge Joel F. Dubina, Judge J.L. Edmondson, Judge Peter T. Fay. Judge Fuller, Judge John C. Godbold, Judge Granade, Judge James C. Hill, Judge Frank M. Hull, Judge Phyllis A. Kravitch, Judge Stanley Marcus, Judge Mickle, Judge Moore, Judge William H. Pryor, Judge Royal, Judge Gerald Bard Tjoflat, and Judge Charles R. Wilson have all ignored the dishonesty in this matter. Their actions support perjury, subornation of perjury, Rule 11 violations, obstruction of justice, dishonest parties, dishonest attorneys, and corrupt judges.

E. JUDGE DUFFEY ERRED BY MAKING FACT DECISIONS THAT WERE CONTRARY TO THE FACTS THAT WERE BEFORE THE COURT.

Judges, just like jurors, are obligated to deal with only the facts presented to them for consideration. Judges and jurors are not allowed to let their personal prejudices replace or affect the facts, but Judge Duffey did.

The only facts before Judge Duffey in this Civil Action are contained in the declarations of

William M. Windsor. [R.DS1.] [R.DS2.] Judge Duffey erred by making fact statements that were not facts presented by Windsor.

There were no affidavits presented by any other parties, as is required by Local Rule 7.1 A.(1). Therefore, every statement made by Judge Duffey that is not cited to a Windsor declaration or expressed as law or case law is improper.

Judge Duffey made various statements that seem to purport to be facts in the Appealed Order, but these statements must not be considered. Neither Judge Evans nor Plaintiffs filed any affidavits in 2009. Windsor's fact statements have not been controverted. That's because they are true.

This Court must not accept that what Judge Duffey writes is true. Proof of this is provided in Depo-Docs.4,32,42,6,13,15,17,20,21,24,34,36. (See also R.377;Doc.377;R.390;Doc.390;Doc.462.)

F. JUDGE DUFFEY ERRED BY COMMITTING PERJURY.

Judge Duffey has made false statements, and this is perjury. Judge Duffey knew statements he has made in his orders are false. He made them while under his oath as a federal judge and as a member of the State Bar of Georgia. He made the statements intentionally for the purpose of perverting the legal system and covering up for his next-door neighbor, Judge Evans.

This Court should ask the U.S. Attorney to have a grand jury consider perjury and obstruction of justice charges against Judge Duffey and Judge Evans.

G. JUDGE DUFFEY ERRED BY ISSUING ORDERS WITHOUT LEGAL JUSTIFICATION.

Judge Duffey did not have legal justification for issuing the Quash Order (Depo-Doc.32) or the Reconsideration Order (Depo-Doc.42.).

Judge Duffey had no legal authority for this civil action, the motion by Judge Evans, or the orders issues. (FRCP.) There is no rule or case law to provide a legal basis for a judge to file a motion to quash in a civil action in which she is presiding and has been accused of misconduct. So, there is no

rule or case law to permit another judge to rule on such a motion.

Judge Duffey ignored the facts and the law in the Motion for Reconsideration, and Judge Duffey's failure to address the legal issues raised had no legal justification and was an abuse of discretion. (Depo-Doc.34,42.)

H. JUDGE DUFFEY ERRED BY CLAIMING WINDSOR DID NOT CITE ERRORS OF LAW AS CRITERIA THAT WOULD JUSTIFY RECONSIDERATION OF THE QUASH ORDER.

Windsor provided a lengthy list of motions, responses, and declarations as legal support for the Motion for Reconsideration. (Depo-Doc.34 _¶2.) Contrary to the claims of Judge Duffey, these motions and responses cited various laws and case law. The declarations provided factual support for that law.

Judge Duffey dismissed consideration of the Motion for Reconsideration with the patented dishonest judicial response "simply expressing disagreement with rulings."

Judge Duffey speaks of Judge Evans' rulings and affirmation on appeal as if these were rulings that anyone should give any credence to. They were

frauds. Judge Duffey conveniently ignores all of the proof. The only facts before Judge Duffey and this Court are that those rulings were perjury and fraud upon the courts.

Windsor did specify errors of law and fact made by Judge Duffey in his previous decision. Windsor did not rehash in the Motion for Reconsideration the arguments he had previously presented as he addressed 15 specific errors of law and fact. When a judge fails to address the errors of law and fact expressed in a motion, the order must be reversed and remanded.

Judge Duffey's Reconsideration Order (Depo-Doc.42_P2) stated that "A motion for reconsideration is appropriate where there is…a need to correct a clear error of law or fact."

Windsor expressed nine errors of law in the Motion for Reconsideration (Depo-Doc.34). These were not addressed by Judge Duffey in the Reconsideration Order (R.42;Depo-Doc.42):

ERROR OF LAW #1: Judge Duffey failed to address that Windsor argued that the Appealed Orders violate the Constitution as the Deposition is vital to Windsor's legal and Constitutional rights.

Judge Duffey's position is that Windsor is not equal, that Windsor's rights are inferior to the "supremacy" of a federal judgeship. [Depo-Doc.21_Dec_#35_¶65-67.] This Court must reject the attempt to claim that Windsor has no rights. [Depo-Doc.21_Dec_#35_¶68.]

Judges must be subject to deposition when the testimony of the judge is necessary to prevent injustice to the party requesting it. Judges must be subject to deposition when the judges have violated the law. Judges must be subject to deposition when they and only they have the information needed. [Depo-Doc.21_Dec_#35_¶69-72.]

Judge Evans violated her oath repeatedly. [Depo-Doc.21_Dec_#35_¶73-74.] Judge Evans was totally biased, and this violates the Constitution.

> "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See ***Mathews v. Eldridge***, 424 U.S. 319, 344 (1976)..., by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." (***Marshall v. Jerrico Inc.***, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980).)

> "... courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law." (***Stone v Powell***, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).)

Denying the Defendants access to important records, evidence, and witnesses is a violation of Equal Protection. [Depo-Doc.21_Dec_#35_¶75.]

Judge Evans violated the Defendants' civil and constitutional rights under color of law. [Depo-Doc.21_Dec_#35_¶76.]

> "The Due Process Clause serves two purposes...One is to produce, through the use of fair procedures to prevent the wrongful deprivation of interests; ...the other is a guarantee of basic fairness, i.e.: to make people feel that they have been treated fairly."

> "[t]rial before an 'unbiased judge' is essential to due process." ***Johnson v. Mississippi***, 403 U.S. 212, 216 (1971); accord ***Concrete Pipe & Prods. V. Constr. Laborers Pension Trust***, 508 U.S. 602, 617 (1993) "due process requires a neutral and detached judge in the first instance." (citation omitted)

> "justice must give the appearance of justice" ***Levine v. United States***, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing ***Offutt v. United States***, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954).
>
> "even if there is now showing of actual bias", "due process is denied by circumstances that create the likelihood or the appearance if bias" ***Peters v. Kiff***, 407, U.S. 493, 502 (1972).

Windsor believes that the Defendants have not been given a fair trial and cannot have a fair hearing of any type due to the issues alleged. [Depo-Doc.21_Dec_#35_¶77.]

The due process clauses of both the Georgia and the United States Constitutions guarantee a party an impartial and disinterested tribunal in civil cases. ***Marshall v. Jerrico, Inc.***, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980).

> "... the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." "In declaring what shall be the supreme law of the land, the

> Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank". "All law (rules and practices) which are repugnant to the Constitution are VOID". Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law", this renders judicial immunity unconstitutional. ***Marbury v. Madison***, 5 U.S. (2 Cranch) 137, 180 (1803).

The Ninth Amendment to the United States Constitution states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The extent of those rights was detailed in ***Griswold v. Connecticut***, 381 U.S. 479, 484 (1965) in Justice Goldberg's concurrence:

> While the Ninth Amendment—and indeed the entire Bill of Rights—originally concerned restrictions upon federal power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging

> fundamental personal liberties. And, the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the 'liberty' protected by the Fifth And Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments.

This deposition is extremely important because Windsor has motions pending vans in 1:06-CV-0714-ODE that require the testimony of Judge Evans for Windsor to have the best opportunity for success. Windsor has accused Judge Evans of participating with the Plaintiffs and their attorneys in perpetrating a fraud upon the court in 1:06-CV-0714-ODE. [Depo-Doc.21_Dec_#35_¶80-81.] Denying Windsor the ability to take Judge Evans' deposition deprives Windsor of his Constitutional right to obtain the information that he needs to get the orders and judgment set aside in MIST-1.

Windsor also submits that it is a violation of his Constitutional and civil rights to be required to prove extrajudicial bias without being afforded the

opportunity to question Judge Evans in a deposition. Only Judge Evans knows the source of her extrajudicial bias, and Windsor must be given the opportunity to depose Judge Evans to obtain the discovery needed. Absent the ability to pursue discovery regarding the nature of the extrajudicial bias, Windsor has been wrongly denied the ability to have Judge Evans disqualified as the Eleventh Circuit denied appeal because Windsor could not prove extrajudicial bias. [Depo-Doc.21_Dec_#35_¶82.]

ERROR OF LAW #2: Judge Duffey failed to address that Windsor argued that the case law cited by Judge Duffey is not applicable to this matter. The Quash Order and thus the Reconsideration Order are not supported by any case law.

Judge Duffey incorrectly claims: "The attempt to now depose Judge Evans…is expressly prohibited by long-standing case law." Judge Duffey then proceeded to recite the cases used by the U.S. Attorney representing Judge Evans. As Windsor noted in Depo-Doc.21,24, none of these cases are applicable in this case as they all related only to depositions regarding a judge's mental processes. [Depo-Doc.21_ Dec #35 ¶97-98.] [Depo-Doc.24_ Dec #34 ¶20-50.]

28 U.S.C. § 604 provides the legal authority for taking the depositions of judges. Section 4(b)(2) of the Subpoena Regulations Adopted by Judicial Conference ("Subpoena Regulations") provides that restrictions on depositions by judges do not apply to "Legal proceedings, arising out of the performance of official duties by federal judicial personnel, in which federal judicial personnel are parties." As Judge Evans was named a "party" in the fraud upon the court in MIST-1, the Subpoena Regulations.

If the Subpoena Regulations did apply, Windsor has made it crystal clear that he does not seek to depose Judge Evans as to her "mental processes." If Judge Duffey wanted to quash this subpoena on the basis that no one may take the deposition of a judge who has violated the law and committed fraud upon the court, Windsor asked that Judge Duffey cite those cases. Judge Duffey did not cite any cases. Windsor's study of law indicates that judges most definitely can be subpoenaed for depositions in situations such as this. [Depo-Doc.34_Dec #37_¶24.]

ERROR OF LAW #3: Judge Duffey failed to address that Windsor argued that the Court must compel Judge Evans' testimony as required by law due to the presence of extreme and extraordinary circumstances in the form of bad and improper behavior.

Judge Duffey did note that "Courts will consider compelling judicial testimony in the presence of extreme and extraordinary circumstances such as a strong showing of bad faith or improper behavior." [Depo-Doc.32_P6_last_two_sentences.] [Depo-Doc.34_Dec #37_¶25.]

Judge Duffey then falsely and irresponsibly claimed that Windsor did not show "extreme and extraordinary circumstances." [Depo-Doc.34_Dec #37_¶26.]

Windsor is quite sure that the citizens of the United States will be upset to learn that the following represents "ordinary" circumstances that our courts should not be concerned with:

- A judge that committed perjury as many as 200 times in claiming facts in orders of the court that were absolutely false as proven by the evidence before the court.
- Plaintiffs who committed perjury over 400 times.
- Attorneys for the Plaintiffs who filed false sworn pleadings routinely, committed hundreds of counts of perjury, subornation of perjury, and obstruction of justice, and violated numerous laws, Rules, and the Code of

Professional Conduct. [Depo-Doc.34_Dec #37_¶27.]

There was no justice in this case. The laws of Georgia and the United States and the Federal Rules of Civil Procedure provide legal remedies to parties so abused. By issuing the Appealed Orders, Judge Duffey is violating Windsor's legal and Constitutional rights. Judge Duffey is denying Windsor the ability to obtain the information that he needs to be able to have the judgment and orders in Civil Action No. 1:06-CV-0714-ODE voided due to perjury and fraud upon the court. Judge Duffey is denying Windsor the ability to obtain the information that he needs to ensure that Judge Evans is disqualified. [Depo-Doc.34_Dec #37_¶28.]

ERROR OF LAW #4: Judge Duffey failed to address that Windsor argued that he had complied with legal requirements of the Federal Judiciary's Subpoena Regulations.

In the Quash Order, Judge Duffey claimed Windsor failed to comply with the requirements of the Subpoena Regulations. This was false. In the Response to the Motion to Quash (Depo-Doc.21,24), Windsor addressed each of these legal issues and documented exactly what was done. [Depo-Doc.21_P11-15_ Dec #35_¶41-64.] In the Response to the Motion to Quash, Windsor again

addressed each of these legal issues and documented exactly what was done. Windsor used the published information of the Judicial Conference as the guide for issuing the subpoena for the deposition. Windsor met all of the regulations to allow this deposition to move forward, and there is no admissible evidence before this Court to the contrary. [Depo-Doc.34_Dec #37_¶37.] Judge Duffey failed to address this in the Reconsideration Order. [Depo-Doc.42.]

The Eighth Declaration of Defendant William M. Windsor in Support of Motion to Recuse Judge Evans ("Dec #8"–Doc.383) was prepared in response to the "Subpoena Regulations Adopted by Judicial Conference." Windsor later prepared the Twenty-Third Declaration of William M. Windsor ("Dec #23" -- Evans Docket #406—R.406). Dec #23 is even more specific in setting forth the testimony that is being sought from Judge Evans. It explains the relevance of the testimony, the reasons testimony is sought, and why the information is not available from other sources or by other means. [Depo-Doc.21_Dec_#35_¶96.]

The nature of the testimony sought is appropriate. The testimony is necessary to prevent the perpetration of fraud or injustice in this case. The request is not unduly burdensome and is inappropriate under applicable court or administrative rules. The request has proper

authority. The subpoena was issued by the Clerk of the Court as is required for pro se defendants. [Depo-Doc.21_Dec_#35_¶41-44.]

This request was properly served. As the request for testimony was to be provided to the federal judicial personnel from whom testimony is sought at least fifteen (15) working days in advance of the time by which the testimony was to be required, Windsor provided the subpoena to Judge Evans on May 20, 2009 with a proposed deposition date of June 16, 2009. This was timely. Windsor sent a letter to Judge Evans asking for a convenient time for the deposition, and he did not receive a response. This letter is to Exhibit #1to Dec_#35. [Depo-Doc.21_Dec_#35_¶46.]

The testimony would not violate a statute, regulation, or ethical rule. [Depo-Doc.21_Dec_#35_¶47.]

The testimony would not disclose confidential information from or pertaining to a presentence investigation report or pertaining to an individual's probation, parole, or supervised release, or would disclose any other information that is confidential under any applicable statute or regulation. [Depo-Doc.21_Dec_#35_¶48.]

The testimony could not be reasonably expected to result in the appearance of the federal

judiciary favoring one litigant over another, or endorsing or supporting a position advocated by a litigant. The purpose of this deposition is to obtain information because of the appearance that Judge Evans favored the Plaintiffs over the Defendants. [Depo-Doc.21_Dec_#35_¶49.]

This request does not seek testimony of Judge Evans as an expert witness. [Depo-Doc.21_Dec_#35_¶51.]

This request does not seek personnel files, records or documents pertaining to a current/former federal judicial officer or employee. [Depo-Doc.21_Dec_#35_¶52.]

Windsor is seeking this deposition to prove that documents withheld from A&W by Judge Evans were due to fraud upon the court by the Plaintiffs or obstruction of justice or perjury by Judge Evans. [Depo-Doc.21_Dec_#35_¶53.]

Windsor is seeking this deposition for proper reasons. [Depo-Doc.21_Dec_#35_¶54.]

The testimony sought is not available from any other source or by any other means. Judge Evans is the only person who reviewed the documents in camera and the only person who knows why she was so biased. [Depo-Doc.21_Dec_#35_¶55.]

The effect of this deposition in this particular case should be to lead to recusal of Judge Evans and reopening of 1:06-CV-0714-ODE so that justice may be done. [Depo-Doc.21_Dec_#35_¶56.]

Windsor is seeking this deposition in his efforts to reopen 1:06-CV-0714-ODE. [Depo-Doc.21_Dec_#35_¶58.]

Windsor is seeking this deposition in his efforts to have Judge Evans recused or disqualified. [Depo-Doc.21_Dec_#35_¶59.]

Windsor is seeking this deposition in his efforts to have Glynn, Ruddy, and Schul found guilty of perjury. Guilty verdicts against Plaintiffs' managers should enable Windsor to have the judgment and orders in this case set aside. [Depo-Doc.21_Dec_#35_¶60.]

Windsor is seeking to have Plaintiffs' Attorneys found guilty of suborning perjury, obstruction of justice, and other charges. [Depo-Doc.21_Dec_#35_¶61.]

Windsor would like to ask Judge Evans about facts. There is no deliberative process in facts used for a summary judgment, and Windsor alleges that as many as 210 of the statements in the Summary Judgment Order are false. [Depo-

Doc.21_Dec_#35_¶62.]

Windsor seeks information required for his motions to recuse Judge Evans, set aside the judgment and orders, and pursue charges against the Plaintiffs, the Plaintiffs' attorneys, and Judge Evans Windsor has accused Judge Evans of violating the law. [Depo-Doc.21_Dec_#35_¶63.]

Windsor agreed that Judge Evans did not have to answer any questions that sought to inquire into her mental processes in this case. If necessary, Windsor stated he would present a list of questions under seal for the Court to review in camera. [Depo-Doc.21_Dec_#35_¶64;Depo-Doc.34_Dec #37_¶38.]

ERROR OF LAW #5: Judge Duffey failed to address that Windsor argued that this proceeding is not closed; the subpoena is valid; and the subpoena should not be quashed on that basis. Judge Duffey recited cases submitted by the U.S. Attorney, none of which pertain to the facts in this matter. Judge Duffey ruled motions moot on the basis that "a case the Court already has noted has been appealed, affirmed, and which is over and closed."

The subpoena was validly issued and served. There were proceedings in this Civil Action and in Civil Action No. 1:06-CV-0714-ODE, including a

Second Motion to Recuse. [Depo-Doc.21_Dec_#35_¶85.]

A Final Order was issued in this case in December 2008 based upon a settlement most reluctantly agreed to by the Defendants. That settlement did not include a release in favor of the Plaintiffs. The Defendants settled based upon fear of what Judge Evans would wrongfully do to them next. The Defendants did not agree that they would take no further action in this or related matters. [Depo-Doc.21_Dec_#35_¶87.]

"Proceedings" do not necessarily end after a Final Order is entered. Specifically, the Defendants have the legal right to pursue actions under FRCP Rule 60, under various Georgia statutes, under Local Rule 83.1C and 83.1F(2), under the Court's inherent powers, and probably under other rules and statutes. [Depo-Doc.21_Dec_#35_¶88.]

Judge Evans issued an order on May 22, 2009 that noted that the Defendants agreed to not appeal the Final Order. This is true, but the Defendants did not give up any rights as there was nothing to appeal. [Depo-Doc.21_Dec_#35_¶89.]

Exhibit 3 to Dec_#35 includes many definitions of an "appeal" as "a proceeding for review at a higher court." There is no higher court

involved with Windsor's motions, so none of this is an appeal. [Depo-Doc.21_Dec_#35_¶90.]

Subpoenas and discovery are permissible whenever a "proceeding" is pending. Windsor's motions create a "proceeding." [Depo-Doc.21_Dec_#35_¶91.]

Under 28 U.S.C. § 455(a), a district judge must recuse himself "in any proceeding in which his impartiality might reasonably be questioned."

> "We note that section 455(d)(1) defines "proceeding" to include "pre-trial, trial, appellate review, or other stages of litigation." ***U.S. v. Sciarra***, 851 F.2d 621, 635 (11th Cir. 1988). It "confers a right upon the litigant to seek recusal [during] . . . . phases [*3] of the litigation." *Id.*

"Each of the statutory examples of a proceeding implies the judge's participation in decisions affecting the substantive rights of litigants to an actual case or controversy." A pending action is any action in which the rights of the petitioners are at issue. The rights of Windsor are at issue in the motions that are filed in the instant case. [Depo-Doc.21_Dec_#35_¶92.]

Mr. Huber claims the subpoena was untimely. Mr. Huber distorted reality by claiming a subpoena

should generally be quashed when it is served after the close of discovery. There are many occasions that necessitate the use of a subpoena after discovery has closed. In fact, in MIST-1, two depositions were taken after discovery closed. It is also clear that there are occasions where a subpoena is appropriate after a Final Order has been issued. [Depo-Doc.21_Dec_#35_¶93.]

ERROR OF LAW #6: Judge Duffey failed to address that Windsor argued that the appealed order should be reversed as Judge Duffey did not enforce the Rules.

Windsor objected to the Motion to Quash and pleaded that the Motion to Quash should be denied on procedural grounds. [Depo-Doc.21_Dec_#35_¶107.]

First, neither the Motion nor the Memorandum of Law in support of the Motion were supported by affidavit, yet the Memorandum of Law attempts to present facts for the consideration of this Court. [Depo-Doc.21_Dec_#35_¶108.]

Second, Mr. Huber failed to meet the requirements of Local Rule 7.2B: [Depo-Doc.21_Dec_#35_¶109.]

Third, Mr. Huber violated Rule 11 of the Federal Rules of Civil Procedure. Mr. Huber filed

false pleadings. Mr. Huber violated Local Rule 83.1C. Mr. Huber also violated Rule 3.3 of the State Bar of Georgia Code of Professional Conduct by failing to show candor to the tribunal. Mr. Huber also violated Rule 3.3 of the State Bar of Georgia Code of Professional Conduct by failing to show fairness to the opposing party. [Depo-Doc.21_Dec_#35_¶110.]

Fourth, Mr. Huber contacted Mr. Carl Hugo Anderson ("Mr. Anderson"), Plaintiffs' attorney, to encourage him to file a motion in support of Judge Evans' position in this matter. Since Mr. Huber is an agent of the judge, Windsor submits that this is an improper ex parte communication between Judge Evans and the Plaintiffs' attorney, Mr. Anderson. [Depo-Doc.21_Dec_#35_¶111.]

Fifth, Mr. Huber violated Rule 11(a): "The paper must state the signer's address, e-mail address, and telephone number." [Depo-Doc.21_Dec_#35_¶112.]

These procedural issues were raised in the Motion for Reconsideration. [Depo-Doc.34.] Complete details are provided therein and in the Twenty-Ninth Declaration of William M. Windsor ("Dec #29") attached thereto. [Depo-Doc.21_Dec_#35_¶113.]

Judge Duffey violated Local Rule 7.1 C of the Local Civil Rules for the United States District Court for the Northern District of Georgia. "When the movant deems it necessary to file a reply brief, the reply must be served not later than ten (10) days after service of the responsive pleading." Judge Duffey issued the Quash Order on June 30, 2009. Windsor planned to file Reply briefs, but Windsor was improperly denied the time allowed by the Local Rules to reply to Depo-Doc. #27 filed June 25, 2009; Depo-Doc. #28 and Depo-Doc. #29 filed June 26, 2009, and Depo-Doc. #30 and 31 filed June 29, 2009. The Reconsideration Order should be reversed and remanded due to Judge Duffey's violation of the Local Rules. [Depo-Doc.34_Dec #37_¶13.] Judge Duffey ignored these violations.

"Proceedings" do not necessarily end after a Final Order is entered. Specifically, the Defendants have the legal right to pursue actions under FRCP Rule 60, under various Georgia statutes, under Local Rule 83.1C and 83.1F(2), under the Court's inherent powers, and probably under other rules and statutes. [Depo-Doc.34_Dec #37_¶39.]

The Motion to Quash should have been denied on procedural grounds. Judge Duffey was obligated to enforce the law and the Rules, and by ignoring these procedural deficiencies, Judge Duffey ignored his responsibilities. [Depo-Doc.34_Dec #37_¶40.]

ERROR OF LAW #7: Judge Duffey failed to address that Windsor argued that this is first and foremost a question of the most basic legal rights. Judge Duffey did not rule on the basis of the motion filed, the case law cited, fundamental legal rights and obligations, and what the law should be.

This is first and foremost a question of the most basic legal rights. Judge Duffey failed to address this error of law. This Court must reverse and remand the orders of Judge Duffey if the decision is based on the motions filed, the case law cited, fundamental legal rights and obligations, and what the law should be. [Depo-Doc.21_P1-2;Dec #35_¶11-15.]

ERROR OF LAW #8: Judge Duffey failed to address that Windsor argued that Judge Duffey has violated Canons 1, 2, 3, 3D(1), 3D(2) of the Code of Judicial Conduct.

Windsor submits that Judge Duffey has violated Canon 1 of the Code of Judicial Conduct -- Judges Shall Uphold the Integrity and Independence of the Judiciary. Judges shall not show favoritism. The rulings of Judge Duffey show definite favoritism for a fellow judge. [Depo-Doc.34_Dec #37_¶41.]

Windsor submits that Judge Duffey has violated Canon 2 of the Code of Judicial Conduct -- Judges Shall Avoid Impropriety and the Appearance of Impropriety. Judges shall respect and comply with the law. Judges shall promote public confidence in the integrity of the judiciary. Judges shall promote public confidence in the impartiality of the judiciary. The rulings of Judge Duffey show definite favoritism for a fellow judge. This ruling does not promote public confidence in the integrity of the judiciary. The ruling of Judge Duffey sends a message that it is okay for parties, attorneys, and judges to violate the Rules, Codes, and laws repeatedly in their efforts to pervert the legal process. Judge Duffey's ruling sanctions lying and committing perjury in the United States District Court for the Northern District of Georgia. [Depo-Doc.34 Dec #37_¶42.]

Windsor submits that Judge Duffey has violated Canon 3 of the Code of Judicial Conduct -- Judges Shall Perform the Duties of Their Office Impartially and Diligently. Judges should be faithful to the law. Judges shall perform judicial duties without bias or prejudice. Judges shall accord to every person the right to be heard according to law. The rulings of Judge Duffey show definite favoritism for a fellow judge. Judge Duffey has ignored the law and has denied Windsor the right to be heard. Judge Duffey did not respond

to a single thing that Windsor presented in his motions. [Depo-Doc.34_Dec #37_¶43.]

Windsor submits that Judge Duffey has violated Canon 3D.(1) of the Code of Judicial Conduct -- Judges who receive information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. Judge Evans has committed hundreds of violations of the Code of Judicial Conduct. Rather than pretend nothing improper happened, Judge Duffey has a legal obligation to take action against Judge Evans. [Depo-Doc.34_Dec #37_¶44.]

Windsor submits that Judge Duffey has violated Canon 3D.(2) of the Code of Judicial Conduct -- Judges who receive information indicating a substantial likelihood that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action. Judges having knowledge that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. Rather than ignore what has happened, Judge Duffey has a legal obligation to take action against Plaintiffs' Attorneys. [Depo-Doc.34_Dec #37_¶45.]

ERROR OF LAW #9: Judge Duffey failed to address that Windsor argued for extending, modifying, or reversing existing law or establishing new law.

Windsor must also argue for extending, modifying, or reversing existing law or for establishing new law, if necessary. [Depo-Doc.21_Dec_#35_¶102.]

There is no case law with facts that even come close to the facts in this case. Windsor submits that all case law must be ignored. [Depo-Doc.21_Dec_#35_¶103.]

The whole idea of justice requires a fair trial with an impartial judge. [Depo-Doc.21_Dec_#35_¶104.]

In extreme circumstances such as this where it appears that the judge was not impartial, made errors of law, made errors with facts, allowed perjury to pervert the legal process, the losing party should be allowed to take the Judge's deposition in its efforts to recuse the judge and seek to reopen the case or get the judgment and orders set aside due to perjury. [Depo-Doc.21_Dec_#35_¶105.]

When the judge is so obviously biased that the judge ignores the facts and the law, invents facts that do not exist in the record, completely ignores

charges of hundreds of counts of perjury and suborning perjury, ignores the laws regarding summary judgments, consistently violates its own rulings to favor of the Plaintiffs, has extensive ex parte dealings with the Plaintiffs' attorneys, and does the many other things that Judge Evans has done, it really shouldn't matter where the bias comes from. In a case such as this, it was absolutely impossible for the Defendants to have a fair trial. In a case such as this, the Defendants should be allowed to depose the judge to try to determine what happened. [Depo-Doc.21_Dec_#35_¶106.]

I. JUDGE DUFFEY ERRED BY CLAIMING WINDSOR DID NOT CITE ERRORS OF FACT AS CRITERIA THAT WOULD JUSTIFY RECONSIDERATION OF THE COURT'S ORDER.

Windsor expressed six errors of fact. These were not addressed by Judge Duffey in the Reconsideration Order.

Judge Duffey stated that errors of fact are a reason for reconsideration of a motion. Then he falsely claimed that Windsor cited no errors of fact. This should be considered perjury. The orders must be reversed and remanded.

ERROR OF FACT #1: One of the primary errors of fact that Windsor made in the Motion

for Reconsideration is that Judge Duffey falsely and maliciously branded Windsor as "SCURRILOUS AND IRRESPONSIBLE."

One of the primary points that Windsor made in the Motion for Reconsideration is that Judge Duffey falsely and maliciously branded Windsor as "SCURRILOUS AND IRRESPONSIBLE." [Depo.Doc.34.]

This Court has the audacity to declare in the public record that Windsor's statements are "scurrilous and irresponsible...." [Depo-Doc. #32 -- Opinion and Order, P 5 ¶2.] [Depo-Doc.34_Dec #37_¶16.]

This is an outrage. Scurrilous is defined as using coarse language, vulgar, evil, containing obscenities, foul-mouthed. [Depo-Doc.34_Dec #37_¶16_and_Exhibit A.] Windsor has not used any coarse language, nothing vulgar or evil, has uttered no obscenities in filings with this Court, and has not been foul-mouthed in the presence of this Court. [Depo-Doc.34_Dec #37_ ¶17.]

Irresponsible is defined as a lack of responsibility, not mentally or financially fit to assume responsibility, not answerable to a higher authority, unreliable, shiftless, untrustworthy, careless. [Depo-Doc.34_Dec #37_¶17_and_Exhibit B.] Windsor has not been the least bit irresponsible

in this matter. Windsor is mentally and financially fit, is answerable to several higher authorities, is reliable, is trustworthy, is not careless, and is anything but shiftless. [Depo-Doc.34_Dec #37_¶18.]

Windsor submits that Judge Duffey's use of the term "scurrilous" is legally vulgar and most irresponsible. [Depo-Doc.34_Dec #37_¶19.] It is libel, and it is perjury.

ERROR OF FACT #2: The only facts before Judge Duffey in this Civil Action are contained in the declarations of William M. Windsor. Judge Duffey erred by making fact statements that were not facts presented by Windsor.

Another major point regarding errors of fact is the fact that the only facts before Judge Duffey in this Civil Action are contained in the declarations of William M. Windsor. Judge Duffey erred by making fact statements that were not facts presented by Windsor.

There were no affidavits presented by any other parties, as is a requirement of Local Rule 7.1 A.(1). Therefore, Windsor submits that Judge Duffey's claim of "Background" is improper.

Judge Duffey made various statements that seem to purport to be facts in the Appealed Orders,

but these statements are not supported by any evidence or citations and should not be considered. Neither Judge Evans nor Maid filed any affidavits in 2009. (Depo-Doc.4,32,42.) Windsor's fact statements have not been controverted. That's because they are true. [R.DS1;R.DS2.]

This Court must not accept that what Judge Duffey writes is true. Proof of this is provided in Depo-Docs.4,32,42,6,13,15,17,20,21,24,34,36. (See also R.377;Doc.377;R.390;Doc.390;Doc.462.)

ERROR OF FACT #3: The allegations of "Background" in the first paragraph of page 3 of the Reconsideration Order are incorrect.

The allegations of "Background" in the first paragraph of page 3 of the Reconsideration Order are incorrect. Maid did not file suit against Alcatraz and Windsor alleging tortious interference with business relations. Maid did not seek a permanent injunction against "Alcatraz's future voucher sales." These incorrect claims of fact by Judge Duffey indicate a lack of understanding of this case, and it is irresponsible for him to make such statements. Judge Duffey apparently did not even read the information filed with the Court before issuing orders. [Depo-Doc.34_Dec #37_¶21.]

ERROR OF FACT #4: Judge Duffey has claimed on page 5, paragraph 2 of the Reconsideration

Order [Depo-Doc. 32] that "it is clear that Windsor is seeking to require Judge Evans to testify about her mental process and decision-making in the course of her official duties...." This is absolutely false.

Judge Duffey has claimed on page 5, paragraph 2 of the Reconsideration Order [Depo-Doc.32] that "it is clear that Windsor is seeking to require Judge Evans to testify about her mental process and decision-making in the course of her official duties...." This is absolutely false. How can Judge Duffey make such a statement when the only facts before Judge Duffey are stated in Windsor's declarations -- Dec #27, Dec #28, Dec #29, Dec #30, Dec #31, Dec #32, Dec #33, Dec #34, and Dec_#35? Windsor clearly states that he will not seek "mental processes." Windsor clearly states that he is even willing to submit the questions for review and approval by Judge Duffey prior to the deposition. [Depo-Doc.21 and Dec_#35, P 15 ¶ 64.] [Depo-Doc.34_Dec #37_¶22.]

The nature of the testimony sought is to determine if Judge Evans withheld documents from the Defendants improperly. Judge Evans reviewed two contracts in camera and ruled that the contracts would not be disclosed to the Defendants. Windsor recently obtained copies of the contracts through other legal actions, and these contracts were extremely relevant and should have been produced.

Windsor submits that depriving the Defendants of these documents constitutes a fraud upon the court and obstruction of justice by either the Plaintiffs or by Judge Evans. The nature of the testimony was detailed in Depo-Doc.21_P.7-11_ Dec #35 ¶31-40

ERROR OF FACT #5: Judge Evans falsely claims in the footnote on page 8 of the Reconsideration Order that Windsor failed to comply with the Regulations Adopted by Judicial Conference.

Judge Duffey claims in the footnote on page 8 of the Reconsideration Order that Windsor failed to comply with the Regulations Adopted by Judicial Conference. Windsor processed his request to depose Judge Evans **precisely** in accordance with those Regulations. This was detailed by line item in Windsor's Response to the Motion to Quash [Depo-Doc.21] and Windsor's Response to Motion to Supplement [Depo-Doc. #24]. This Court ignores completely the facts in this matter in making such a false claim. [Depo-Doc.34_Dec #37_¶30.]

The nature of the testimony sought is to determine if Judge Evans withheld documents from the Defendants improperly. Judge Evans reviewed two contracts in camera and ruled that the contracts would not be disclosed to the Defendants. Windsor recently obtained copies of the contracts through other legal actions, and these contracts were

extremely relevant and should have been produced. Windsor submits that depriving the Defendants of these documents constitutes a fraud upon the court and obstruction of justice by either the Plaintiffs or by Judge Evans. The nature of the testimony was detailed in the Depo-Doc.21_P.7-11_ Dec #35 ¶31-40. Details of how Windsor complied with the requirements of the Federal Judiciary's disclosure regulations is provided in Depo-Doc.21_P11-15_ Dec #35 ¶41-64.

The Eighth Declaration of Defendant William M. Windsor in Support of Motion to Recuse Judge Evans ("Dec #8") was prepared in response to the "Subpoena Regulations Adopted by Judicial Conference." (Exhibit B to Doc.383.) Windsor later prepared a new declaration, the Twenty-Third Declaration of William M. Windsor ("Dec #23") attached to Doc.406 as Exhibit C. Dec #23 is an even more specific setting forth the testimony that is being sought from Judge Evans. It explains the relevance of the testimony, the reasons testimony is sought, and why the information is not available from other sources or by other means. [Depo-Doc.21_Dec #35 ¶96.]

ERROR OF FACT #6: Judge Duffey made various statements that seem to purport to be facts in the Reconsideration Order, but these statements are not supported by any evidence or citations and should not be considered.

See Errors of Fact 3, 4, and 5 above.

Judge Duffey has also ruled motions moot on the basis that "a case the Court already has noted has been appealed, affirmed, and which is over and closed." Judge Duffey ignores the law once again. A case is not "over" when Rule 60, the court's inherent powers, set aside for perjury, subornation of perjury, fraud upon the court, RICO violations, obstruction of justice, witness tampering, deprivation of rights, and Complaints of Professional Misconduct by the attorneys and Judge Evans are issues to be addressed. [Depo-Doc.34_Dec #37_¶31.]

ERROR OF FACT #6: JUDGE DUFFEY ERRED BY CLAIMING THAT THE NATURE OF THE TESTIMONY SOUGHT WAS TO INQUIRE INTO THE MENTAL PROCESSES OF JUDGE EVANS.

Judge Duffey erred because the evidence before the Court proves that this is a false statement by Judge Duffey.

The nature of the testimony sought is to determine if Judge Evans withheld documents from the Defendants improperly. Judge Evans reviewed two contracts in camera and ruled that the contracts would not be disclosed to the Defendants. Windsor

recently obtained copies of the contracts through other legal actions, and these contracts were extremely relevant and should have been produced. Windsor submits that depriving the Defendants of these documents constitutes a fraud upon the court and obstruction of justice by either the Plaintiffs or by Judge Evans. *A judge is not the court.* ***People v. Zajic***, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980). [Depo-Doc.21_Dec_#35_¶31.]

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In ***Bulloch v. United States***, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." ***Kenner v. C.I.R.***, 387 F.3d 689 (1968); 7 ***Moore's Federal Practice***, 2d

ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." Under Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

The nature of the testimony sought is to investigate the ex parte communication between the Plaintiffs' Attorneys and Judge Evans. [Depo-Doc.21_Dec_#35_¶32.]

The nature of the testimony sought is to establish that Judge Evans ignored Windsor's report of hundreds of lies and counts of perjury by the Plaintiffs and numerous false sworn pleadings, false pleadings, and improper pleadings by Plaintiffs' attorneys. This magnifies the possibility that Judge Evans has committed perjury, fraud upon the court, and obstruction of justice. [Depo-Doc.21_Dec_#35_¶33.]

The nature of the testimony sought is to inquire about the source of allegedly fact statements included in the orders of Judge Evans. A deposition about facts does not seek to explore "mental processes." If over 200 statements by Judge Evans in Preliminary Injunction and Summary Judgment Orders are false, Windsor should have the right to

ask about these "facts." [Depo-Doc.21_Dec_#35_¶34.]

The nature of the testimony sought is to establish that Judge Evans was improperly biased against the Defendants. [Depo-Doc.21_Dec_#35_¶35.]

The nature of the testimony sought is to establish facts to support Windsor's motions to recuse and disqualify Judge Evans. The issues are detailed in Exhibits #3 and #4 and the declarations and exhibits thereto. Among other things, Windsor has stated that 210 of the 410 statements in Judge Evans' Summary Judgment Order were false, and Windsor has documented these. Windsor submits that false statements in orders constitute perjury by Judge Evans. Those false statements were accepted as "fact" by the 11th Circuit. [Depo-Doc.21_Dec_#35_¶36.]

The nature of the testimony sought is to make inquiries as to whether Judge Evans or a clerk to Judge Evans may have been improperly influenced in this matter. [Depo-Doc.21_Dec_#35_¶37.]

The relevance of the testimony sought to the legal proceedings is that Judge Evans has not been impartial, has made illogical statements in her orders that do not reflect the facts, has invented facts, and much more. In Windsor's opinion, there

is no logical explanation for how a federal judge could have handled a case in this manner. The relevance of the testimony is that it should prove that Judge Evans was hoodwinked by the Plaintiffs and/or was so biased against the Defendants or in favor of the Plaintiffs that the judge was simply unfair to the Defendants for some reason that only Judge Evans knows. [Depo-Doc.21_Dec_#35_¶38.]

The effect of this deposition should be to lead to recusal of Judge Evans and reopening of this case so that justice may be done. [Depo-Doc.21_Dec_#35_¶39.]

Mr. Huber, the U.S. Attorney, claimed the testimony sought by the subpoena seeks to Invade Judge Evans' decision-making process and mental process, the subpoena should be quashed." [Depo-Doc.21_Dec_#35_¶83.]

Windsor does not seek to determine the "mental processes" used by Judge Evans any more than is necessary to gather the information that he needs to obtain due process and protect his own rights. [Depo-Doc.21_Dec_#35_¶84.]

J. JUDGE DUFFEY HAS VIOLATED THE CODE OF JUDICIAL CONDUCT AND HAS DEPRIVED WINDSOR OF HIS CONSTITUTIONAL RIGHTS.

Judges must be subject to deposition when the testimony of the judge is necessary to prevent injustice to the party requesting it. Judges must be subject to deposition when they have violated the law. Judges must be subject to deposition when they and only they have the information needed. [Depo-Doc.21_Dec_#35Dec #35 ¶698.]

See Depo-Doc.21_Dec_#35_P.15-21_ Dec #35 ¶65-82.

Judge Evans has violated the Defendants' civil and constitutional rights under color of law.

"Judges cannot invoke judicial immunity for acts that violate litigants civil rights." ***Robert Craig Waters. Tort & Insurance Law Journal***, Spr. 1986.

Violations of the Code of Judicial Conduct are discussed above.

The mission of judges is supposed to be to see that justice is done. In this case, justice was not done, and Judge Evans and Judge Duffey are responsible for that. The federal judiciary must not allow judges to withhold documents, turn a blind eye to massive perjury, ignore the evidence before the Court, invent evidence, and show a complete lack of impartiality. [Depo-Doc.21_Dec_#35_¶40.]

The Appealed Orders were based on an erroneous view of the law and a clearly erroneous assessment of the evidence.

> "[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." (***FDIC v. United Pac. Ins. Co.***, 152 F.3d 1266, 1272 (10th Cir.1998) (internal quotation omitted); ***Zurich v. Matrix***, 426 F.3d 1281, 1286-1288 (10th Cir. 2005).)

Judge Duffey has violated Windsor's most basic Constitutional rights as has Judge Evans.

> (***Boyd v. United***, 116 U.S. 616 at 635 (1885) (It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizens, and against any stealthy encroachments thereon.); ***Downs v. Bidwell***, 182 U.S. 244 (1901) ("It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgement in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution."); ***Gomillion v. Lightfoot***, 364 U.S. 155 (1966) ("Constitutional 'rights' would be of little value if they could be indirectly denied."); ***Butz v. Economou***, 98 S.

Ct. 2894 (1978) ("No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it."); ***United States v. Lee***, 106 U.S. at 220, 1 S. Ct. at 261 (1882) ("No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law are bound to obey it." "It is the only supreme power in our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives."); ***Cannon v. Commission on Judicial Qualifications***, (1975) 14 Cal. 3d 678, 694 (Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process); ***Geiler v. Commission on Judicial Qualifications***, (1973) 10 Cal.3d 270, 286 (Society's commitment to institutional justice requires that judges be solicitous of the rights of persons who come before the court.); ***Gonzalez v. Commission***

on Judicial Performance**, (1983) 33 Cal. 3d 359, 371, 374 (*Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process.); ***Olmstad v. United States, (1928) 277 U.S. 438 ("Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."); ***U.S. v. Lee***, 106 U.S. 196, 220 1 S. Ct. 240, 261, 27 L. Ed 171 (1882) ("No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law are bound to obey it." "It is the only supreme power in our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives."); ***Duncan v. Missouri**, 152 U.S. 377, 382 (1894) (*Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."); ***Truax v. Corrigan**, 257 U.S. 312, 332 (*"Our whole system of law is

predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' "This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute and apply laws.).)

K. JUDGE DUFFEY FAILED TO PROVIDE VALID LEGAL JUSTIFICATION FOR DENYING CHANGE OF VENUE.

Windsor asked Judge Duffey to order a Change of Venue to transfer this Civil Action to another Federal District pursuant to Local Rule 3.1 B. (4) and any other Rules and Laws that the Court felt was appropriate. This Local Rule reads: "Any civil action may, by order of this court, be transferred **to any other place**...." This case needs to be moved to another Federal District because of prejudice in this District and in order to give Windsor any chance of a fair hearing. [Depo-Doc.36_¶1_and_Dec#46_¶11.)

Judge Duffey falsely claimed: "Windsor also elected to file this action in this district." [Depo.Doc.42.] This is false. This action was created by Judge Evans, not Windsor. Windsor did not file MIST-1; it was filed by Maid, and Windsor did not even have a counterclaim. [Depo-Doc.1.]

Judge Duffey also falsely claims: "He has already received a fair review of his claims here." [Depo.Doc.42.] The facts before Judge Duffey indicate just exactly the opposite – Windsor did not receive a fair review in MIST-1 or in this civil action.

Judge Duffey also falsely claimed that this case could not be moved to another district, but 28 U.S.C. 1404 provides: "...in the interest of justice, a district court may transfer any civil action to any other district or division...."

This Court has violated Local Rule 7.1 C of the Local Civil Rules for the United States District Court for the Northern District of Georgia in dealings with this Civil Action as well as Canons 1, 2, and 3 of the Code of Judicial Conduct. In the underlying case, Civil Action No. 1:06-CV-0714-ODE, Judge Evans has violated Canons 1, 2, and 3 of the Code of Judicial Conduct and numerous rules of the Georgia Code of Professional Conduct. Windsor also submits that a Grand Jury should consider whether Judge Evans has committed the following violations of the law:

a. Deprivation of Rights – 21 USC § 1983;
b. Fraud on the Court -- Rule 60(d)(3) of the Federal Rules of Civil Procedure;

c. Perjury – O.C.G.A. 16-10-70 and USC 18 § 1621 and USC 18 § 1623;
d. Subornation of Perjury – O.C.G.A. 16-10-72, USC 18 § 1622, O.C.G.A. 16-10-72, and O.C.G.A. 16-10-93;
e. Witness Tampering – O.C.G.A. 16-10-93 and 18 U.S.C. 1503;
f. Obstruction Of Justice – influencing testimony –18 USC § 1512(b);
g. Obstruction Of Justice – concealing documents –18 USC § 1512(c) and O.C.G.A. 16-10-93;
h. Obstruction Of Justice – 18 USC § 1503;
i. Conspiracy To Defraud United States (Obstruct Justice) -- 18 USC § 371; and
j. Making false statements -- 18 USC § 1001. [Depo-Doc.36_Dec #46_¶13.]

Without hearing any facts or evidence other than that presented by Windsor, this Court immediately branded Windsor's accusations as "scurrilous and irresponsible." [Depo-Doc. #32.] It is impossible to get a fair hearing in this Court with such an improper mindset. [Depo-Doc.36_Dec #46_¶14.]

Windsor questions whether there are any judges in the United States District Court for the Northern District of Georgia who do not routinely ignore the facts and the law in making their rulings.

Judge Evans routinely ignored the facts and the law in the underlying case, and now Judge Duffey has done the same. [Depo-Doc.36_Dec #46_¶15.]

Windsor submits that judges do everything possible to protect fellow judges. As a 30-year veteran of the Northern District of Georgia and as a former Presiding Judge, Windsor submits that Judge Evans is a senior judge who is most likely to be protected by her fellow judges. [Depo-Doc.36_Dec #46_¶16.]

Windsor asked that this Civil Action be moved to another District where the judges will not be friends and associates of Judge Evans. [Depo-Doc.36_Dec #46_¶17.]

Case law supporting changes of venue in general include ***Pamplin v. Mason***, 364 F.2d 1 (5th Cir. 1966), ***Murphy v. Florida***, 421 U.S. 794, 797 (1975) (quoting ***Marshall v. United States***, 360 U.S. 310, 313 (1959)); ***United States v. Williams***, 523 F.2d 1203, 1208 (5th Cir. 1975); ***Johnson v. Beto***, 337 F. Supp. 1371, 1376 (S.D. Tex. 1972); ***United States v. Marcello***, 280 F. Supp. 510, 513-14 (E.D. La. 1968); ***United States v. Tokars***, 839 F. Supp. 1578, 1581 (N.D. Ga. 1993). [Depo-Doc.36_Dec #46_¶49.]

If this Court decides that it has the right to deny due process to Windsor, then the Court is

failing to ensure justice in this case. [Depo-Doc.36_Dec #46_¶50.]

The unlawful acts against the Defendants have greatly prejudiced Windsor. [Depo-Doc.36_Dec #46_¶51.]

The United States is a government of the people, by the people, and for the people. The judicial system's function is to serve the public by providing a means to serve justice and to resolve disputes. This can only be done in an environment where honesty, integrity, and high moral standards are strictly enforced. This cannot be done in the United States District Court for the Northern District of Georgia. [Depo-Doc.36_Dec #46_¶52.]

VI. RELIEF SOUGHT

Windsor seeks to have the Order of June 30, 2009 vacated. [R.32.] (Depo-Doc.32.)

Windsor seeks to have the Order of September 3, 2009 vacated. [R.42.] (Depo-Doc.42.)

Windsor seeks an order declaring that none of Windsor's motions are moot.

Windsor seeks an order vacating all orders issued by Judge Duffey.

Windsor seeks remand with instructions that the case be assigned to a new district judge (other than Judge Duffey) for resolution of the pending motions and possible further proceedings. Judge Duffey has established bias for Windsor; he called him "scurrilous and irresponsible" in this matter for having the audacity to attempt to depose Judge Evans.

Windsor was shocked when the U.S.C.A. denied A&W's appeals of the SJ. Alcatraz cited six primary errors with 13 subsidiary errors. Windsor cited an additional 10 errors. The U.S.C.A. did not address the points of error, and the ruling makes absolutely no sense to Windsor. Please do not let this happen again.

Windsor has been doing everything possible in an effort to get a hearing at which Maid's managers can be called to testify. Judge Evans and Judge Duffey have refused every request. If these people are put on the witness stand, the truth will come out, and Windsor will be able to end this nightmare. Justice is just a hearing away.

For the foregoing reasons, Windsor respectfully requests that this Court take this requested action based upon the grounds enumerated herein.

Respectfully submitted, this 2nd day of November, 2009.

William M. Windsor

/s/_____
William M. Windsor
Pro Se

(Certificates of Compliance, Service, and Interested Parties have been omitted to reduce the size and cost of this Appendix.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST
CORPORATION and MAID OF
THE MIST STEAMBOAT
COMPANY, LTD.,

Plaintiffs,

v. 1:09-cv-1543-WSD-WEJ

ALCATRAZ MEDIA, LLC.,
ALCATRAZ MEDIA, INC., and
WILLIAM M. WINDSOR,
Defendants.

OPINION AND ORDER

This matter is before the Court on United States District Judge Orinda D. Evans' Emergency Motion to Quash Subpoena ("Emergency Motion to Quash") [1] and Motion to Supplement United States District Judge Orinda D. Evans' Emergency Motion to Quash Subpoena ("Motion to Supplement") [8]. The subpoena, served by William M. Windsor, seeks Judge Evans' testimony regarding her mental processes and the basis for her decisions in the closed case Maid of the Mist Corp., et al. v. Alcatraz Media, LLC, et al., No: 1:06-cv-714-ODE (N. D. Ga.
2007) ("Maid of the Mist I").

It also is before the Court on Defendant William M. Windsor's Emergency Motion for Hearing [6];

Verified Motion to Disqualify Hawkins & Parnell, Carl Hugo Anderson, Sarah Bright, Phillips Lytle, and Marc W. Brown [9]; Motion for Hearing on Defendant William M. Windsor's Verified Motion to Disqualify Hawkins & Parnell, Carl Hugo Anderson, Sarah Bright, Phillips Lytle, and Marc W. Brown [11]; Defendant William M. Windsor's Emergency Motion for Conference [13]; Defendant William M. Windsor's Motion to Reconsider or Revise Stay Order [15]; Defendant William M. Windsor's Verified Motion to Disqualify Judge Orinda D. Evans [17]; Defendant William M. Windsor's Motion for Leave to Exceed Page Limitation on Motion to Disqualify Judge Evans and Indwelling Memorandum in Support Thereof [18]; Defendant William M. Windsor's Motion for Hearing on William M. Windsor's Verified Motion to Disqualify Judge Orinda D. Evans [20]; Defendant William M. Windsor's Motion for Leave to Exceed Page Limitation on Response to Emergency Motion to Quash and Indwelling Memorandum in Support Thereof [23]; and Motion of Raley & Sandifer, P.C. and Its Attorneys to Withdraw [26].

I. BACKGROUND

These motions all relate in some way to the Maid of the Mist I case, over which Judge Evans presided. In Maid of the Mist I, Plaintiffs' Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd. (collectively "Maid" or "Plaintiffs") and Defendants Alcatraz Media, LLC and Alcatraz Media, Inc. (collectively "Alcatraz") had a business agreement whereby Alcatraz sold vouchers or e-tickets ("vouchers") for tickets to ride Plaintiffs' Maid of the Mist boats at Niagara Falls. At some point the relationship

deteriorated, and Plaintiffs informed Alcatraz that after July 29, 2005, they would not honor Alcatraz's vouchers. Because Alcatraz continued to sell vouchers, Maid filed suit against Alcatraz and Defendant Windsor alleging tortious interference with business relations and seeking a permanent injunction against Alcatraz's future voucher sales. Maid also sought attorney's fees and costs.

The parties filed cross-motions for summary judgment. On August 8, 2007, the Court granted Plaintiffs' Motion for Summary Judgment on its claim for tortious interference, granted a permanent injunction against Defendants' sale of vouchers for rides on Plaintiffs' boats, granted summary judgment in favor of Plaintiffs on each of Alcatraz's counterclaims, and found Defendants liable for attorney's fees and expenses. Judgment was entered on October 16, 2007, and the case was closed that day. The Court later entered an order awarding Plaintiffs' attorney's fees and expenses.

Following the entry of judgment, Defendants appealed. On September 19, 2008, the Eleventh Circuit affirmed the district court's order, but vacated the award of attorney's fees and costs, remanding the attorney's fees and expenses award to
the Court for a new determination of the amount awarded. On December 9, 2008, the Court entered a Consent Final Order and Judgment, in which the parties agreed that $395,000.00 in attorney's fees and expenses would be paid to Plaintiffs. The Consent Final Order and Judgment provided: "The case is hereby closed all issues having been decided. . . . No appeals shall be taken from this Judgment, and the parties waive all rights to appeal."

Over five months later, on or about May 20, 2009, Defendant Windsor attempted to serve a deposition subpoena on Judge Evans seeking Judge Evans' testimony. The subpoena's return date was June 16, 2009. A declaration by Windsor setting forth the substance of the testimony he requested from Judge Evans was attached to the deposition subpoena. In his declaration, Windsor states that he intends to depose Judge Evans to prove that she was biased against Defendants and acted improperly in forming her decisions in the Maid of the Mist I case. Windsor states: "In my opinion, there is no logical explanation for how a federal judge could have handled a case in this manner." Windsor Decl. at ¶ 11.

On June 3, 2009, Judge Evans filed her Emergency Motion to Quash, requesting expedited consideration of her motion before the subpoena's return date. On June 8, 2009, this Court stayed the scheduled deposition of Judge Evans until the Court could decide the motion to quash. On June 10, 2009, Judge Evans filed a Motion to Supplement her Emergency Motion to Quash. On June 22, 2009, Windsor responded to the Emergency Motion to Quash and the Motion to Supplement. [Footnote 1: Defendant Windsor also has filed the other motions identified on page 1 and 2 of this Order.]

Reviewing the subpoena and Windsor's accompanying affidavit, it is clear that Windsor is seeking to require Judge Evans to testify about her mental process and decision-making in the course of her official judicial duties while presiding over Maid of the Mist I. He claims Judge Evans, in granting summary judgment,

wrongfully relied on false testimony offered by the Plaintiffs and that Judge Evans otherwise committed perjury or fraud in issuing her opinions. Plaintiff claims she was biased or prejudiced against Defendants and accuses her of judicial misconduct. These scurrilous and irresponsible statements ultimately are an affront to the decision Judge Evans reached on the Defendants' claims and defenses. Judge Evans' decision was appealed and ultimately affirmed by our circuit. The attempt now to depose Judge Evans to investigate her decision-making and mental process is not allowed and is expressly prohibited by longstanding case law.

Federal Rule of Civil Procedure 45 requires a court, on timely motion, to quash a subpoena that requires disclosure of a privileged or other protected matter. Fed. R. Civ. P. 45(c)(3). It is well-settled that the "mental processes of a judge are not the proper subject of compelled testimony." United States v. Harvey, 544 F.Supp. 189, 191 (S. D. Fla. 1982) (citing United States v. Morgan, 313 U.S. 409, 422 (1941) ("a judge cannot be subjected to such a scrutiny" as the compelled examination "would be destructive of judicial responsibility")). "[J]udges are under no obligation to divulge the reasons that motivated them in their official acts; the mental processes employed in formulating the decision may not be probed." United States v. Cross, 516 F. Supp. 700, 707 (M. D. Ga. 1981), aff'd 742 F.2d 1279 (11th Cir. 1984). See also Robinson v. Commissioner of Internal Revenue, 70 F.3d 34, 38 (5th Cir. 1995) (same); Grant v. Shalala, 989 F.2d 1332, 1344 (3d Cir. 1993) (same). Courts will only consider compelling judicial testimony in the presence of extreme and extraordinary circumstances, such as a strong showing of

bad faith or improper behavior. See Harvey, 544 F. Supp. At 191 (citing United States v. Dowdy, 440 F. Supp. 894, 896 (W. D. Va. 1977)).

Windsor does not and cannot show extreme and extraordinary circumstances warranting enforcement of the subpoena. Judge Evans issued thorough and wellreasoned opinions and orders detailing the reasons for her decision and the authorities which supported them. The Court of Appeals has affirmed her rulings. Windsor's subpoena is an improper attempt to invade the Court's decision-making function and processes which stems from Windsor's continued dissatisfaction with the resolution of his case. This is not a proper basis to subpoena a judge's testimony, and the Emergency Motion to Quash must be granted on this basis alone.

The subpoena also should be quashed because Windsor had it issued well after discovery was over and the case was closed. Ordinarily, a subpoena served after the close of discovery must be quashed. See Pushko v. Klebener, 2007 WL 2671263, at *3 (M. D. Fla. Sept. 7, 2007). Rule 45 requires a subpoena to state the title of the action and the court in which the action is *pending*. Fed. R. Civ. P. 45(a) (emphasis added). Courts have invalidated subpoenas issued after entry of summary judgment or after a case has been appealed. See Azania v. Squadrito, 1997 WL 268085, at *2 (7th Cir. May 7, 1997) and Matter of City of El Paso, Texas, 887 F.2d 1103, 1105 (D.C. Cir. 1989). Not only is discovery closed, but the entire case is closed *and* the Eleventh Circuit has affirmed Judge Evans' rulings. [Footnote 2: The Judicial Conference of the United States has promulgated

regulations pursuant to 28 U.S.C. § 604 governing the testimony of judicial personnel in response to issued subpoenas. Among the purposes of the regulations is to protect the deliberative processes of the judiciary. The regulations required Windsor to process his request to depose Judge Evans in accordance with the Federal Judiciary's regulations regarding the testimony of judicial officers. See Subpoena Regulations Adopted by Judicial Conference: Testimony of Judiciary Personnel and Production of Judicial Records in Legal Proceedings, (March 2003), §§ 1 et seq. Windsor's failure to comply with the regulations is an independent ground for quashing the subpoena.]

With respect to the other motions Defendant filed, they seek to disqualify counsel and the Court who participated in Maid of the Mist I, a case the Court already has noted has been appealed, affirmed and which is over and closed. The motions are improper and otherwise are moot.

Accordingly, IT IS HEREBY ORDERED that Judge Orinda D. Evans' Emergency Motion to Quash Subpoena [1] and Motion to Supplement United States District Judge Orinda D. Evans' Emergency Motion to Quash Subpoena [8] are GRANTED.

IT IS HEREBY FURTHER ORDERED Defendant William M. Windsor's Emergency Motion for Hearing [6]; Verified Motion to Disqualify Harkins & Parnell, Carl Hugo Anderson, Sarah Bright, Phillips Lytle, and Marc W. Brown [9]; Motion for Hearing on Defendant William M. Windsor's Verified Motion to Disqualify Hawkins & Parnell, Carl Hugo Anderson, Sarah Bright,

Phillip Lytle, and Marc W. Brown [11]; Defendant William M. Windsor's Emergency Motion for Conference [13]; Defendant William M. Windsor's Motion to Reconsider or Revise Stay Order [15]; Defendant William M. Windsor's Verified Motion to Disqualify Judge Orinda D. Evans [17];Defendant William M. Windsor's Motion for Leave to Exceed Page Limitation on Motion to Disqualify Judge Evans and Indwelling Memorandum in Support Thereof [18]; Defendant William M. Windsor's Motion for Hearing on William M. Windsor's Verified Motion to Disqualify Judge Orinda D. Evans [20]; and Defendant William M. Windsor's Motion for Leave to Exceed Page Limitation on Response to Emergency Motion to Quash and Indwelling Memorandum in Support Thereof [23] are **DENIED AS MOOT.**

IT IS HEREBY FURTHER ORDERED that the Motion of Raley & Sandifer, P.C. and its Attorneys to Withdraw [26] is **GRANTED** on the grounds their clients, Defendants Alcatraz Media, LLC and Alcatraz Media, Inc., are not parties in this action and thus they should not be listed as counsel of record in this action.

SO ORDERED this 30th day of June, 2009.

/s_____
WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST
CORPORATION and MAID OF
THE MIST STEAMBOAT
COMPANY, LTD.,

Plaintiffs,

v. 1:09-cv-0220-WSD-WEJ

ALCATRAZ MEDIA, LLC.,
ALCATRAZ MEDIA, INC., and
WILLIAM M. WINDSOR,
Defendants.

ORDER

This matter is before the Court on United States District Judge Orinda D. Evans' Emergency Motion to Quash Subpoena ("Emergency Motion to Quash") [1]. [Footnote 1: 1 Plaintiffs Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd. filed a Motion for Joinder [3] seeking to join in Judge Evans' Emergency Motion to Quash, which the Court construes as a motion to adopt Judge Evans' motion. This motion is hereby GRANTED.] The subpoena, served by William M. Windsor, seeks Judge Evans' testimony regarding her mental processes and the bases for her decisions in the closed case Maid of the Mist Corp., et al. v. Alcatraz Media, LLC, et al., No: 1:06-cv-714-ODE (N.D.Ga. 2007).

On or about May 20, 2009, Windsor attempted to serve a deposition subpoena on Judge Evans in her chambers, hand-delivering it to Judge Evans' assistant. The subpoena's return date is June 16, 2009. On June 3, 2009, Judge Evans filed her Emergency Motion to Quash, requesting expedited consideration of her motion before the subpoena's return date.

Pursuant to Local Rule 7.1(B), a party opposing a motion must serve a response not later than ten (10) days after service of the motion. L.R. 7.1(B), NDGa. Excluding weekends and holidays, and adding three days for mailing, see L.R. 6.1(A), Windsor's response is due on June 22, 2009, after the June 16, 2009 scheduled deposition date. Accordingly, the Court **STAYS** the subpoena and deposition until the Emergency Motion to Quash is fully briefed and the Court decides the motion.

SO ORDERED this 8th day of June, 2009.

/s_____
WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

FRAP 38. Frivolous Appeal — Damages and Costs
If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

11th Cir. R. 27-4 Sanctions for Filing a Frivolous Motion.
When a party or an attorney practicing before this court files a frivolous motion, the court may, on motion of a party, or on its own motion after notice and a reasonable opportunity to respond, impose an appropriate sanction on the party,
the attorney, or both. For purposes of this rule, a motion is frivolous if:

(a) it is without legal merit and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, or the establishment of new law; or

(b) it contains assertions of material facts that are false or unsupported by the record; or

(c) it is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Sanctions may be monetary or nonmonetary in nature. Monetary sanctions may include an order to pay a penalty into the court, or an order directing payment to another party of some or

all of the attorney's fees and expenses incurred by that party as a result of the frivolous motion, or both.

When a motion to impose sanctions is filed under this rule, the court may, if warranted, award to the party prevailing on the motion reasonable attorney's fees and expenses incurred in presenting or opposing the motion.

FRAP 3. Appeal as of Right — How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).